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federal register

Thursday
March 1, 1984

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Interior Department
Air Pollution Control
Environmental Protection Agency
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Selected Subjects

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

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Public Health Service

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Coast Guard

Nuclear Materials
Nuclear Regulatory Commission

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 110

Information Collection Requirements; OMB Control Numbers

AGENCY: Office of Personnel Management.

ACTION: Final rule; technical amendment.

SUMMARY: As part of its implementation of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of Management and Budget has directed Federal agencies to codify within the Code of Federal Regulations all OMB-assigned control numbers for approved information collection requirements contained in agency rulemaking. Control numbers for Office of Personnel Management information collection requirements and their corresponding citations within Title 5 of the Code of Federal Regulations (5 CFR) are designated in the table appearing at the end of this document.

EFFECTIVE DATE: March 1, 1984.

FOR FURTHER INFORMATION CONTACT: JoAnn G. Blackler (202) 254-5966.

SUPPLEMENTARY INFORMATION: Pursuant to section 553 of title 5 of the United States Code, OPM finds that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. The amendment provides information which will help in identifying approved information collection requirements within OPM's regulations, and does not have substantive impact.

E.O. 12291, Federal Regulation

OPM has 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 it serves only to identify previously approved information collection requirements in OPM's regulations.

List of Subjects in 5 CFR Part 110

Government employees, Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.
Donald J. Devine,
Director.

Accordingly, OPM is amending 5 CFR Part 110 as follows:

1. The title of Part 110 is revised to read as follows:

PART 110—OPM REGULATIONS AND INFORMATION COLLECTION REQUIREMENTS

2. Subpart B is added to read as follows:

Subpart B—Information Collection Requirements

Sec.
110.201 OMB control numbers.

Authority: 5 U.S.C. 1103, 1104; 5 CFR Part 5.2 (c) and (d); 44 U.S.C. 3507(f); 5 CFR Part 1320.

Subpart B—Information Collection Requirements

§ 110.201 OMB control numbers.

(a) Under section 3507(f) of the Paperwork Reduction Act of 1980 (Pub. L. 96-551), control numbers assigned by the Office of Management and Budget must be displayed with agency information collection requirements.

(b) This paragraph displays OMB-assigned control numbers for information collection requirements contained within chapter 1 of this title.

5 CFR citation	OMB control No.
§ 213.3102(i)	3206-0092
§ 530.304	3206-0160
§ 532.105	3206-0026
§ 536.306	3206-0029
Part 734	3206-0232
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§ 831.2002	3206-0123
§ 830.202	3206-0101
§ 831.104(i)	3206-0017
§ 831.104(i)	3206-0104
§ 831.201	3206-0102

[FR Doc. 84-5553 Filed 2-29-84; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

Avocados Grown in South Florida; Container Regulation Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Finalization of interim rule.

SUMMARY: The Department of Agriculture (USDA) issued an interim rule on January 3, 1984, to amend § 915.305 issued under Marketing Order 915. The rule was published in the Federal Register (49 FR 1048), and it became effective January 9, 1984. The rule slightly modified the dimensions of a currently authorized container used solely for export shipments of avocados, and slightly reduced the minimum net weight of avocados required to be packed in each such container. The rule provided for public comment through February 8, 1984. No comments were received during the 30 days provided, and the USDA has decided to leave the rule in effect as previously issued.

EFFECTIVE DATE: April 2, 1984.

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

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

Finalization of the interim rule is issued under the marketing agreement,

as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). It is hereby found that this action will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 915

Agricultural marketing service, Marketing agreements and orders, Avocados, Florida.

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

Dated: February 23, 1984.

Russell L. Hawes,

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

[FR Doc. 84-5382 Filed 2-29-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-CE-66-AD; Amdt. 39-4821]

Airworthiness Directives:The Balloon Works Model Firefly 7B Hot Air Balloon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to The Balloon Works Model Firefly 7B (Twelve Gore) Hot Air Balloons which requires lengthening and adjustment of the envelope jumper cords. Reports have been received of jumper cord failures due to envelope distortion which may result in leakage of the envelope valve. This action will preclude loss of the vent system and resulting uncontrollable descent of the balloon.

EFFECTIVE DATE: April 9, 1984.

Compliance: Required within the next 10 hours time in service after the effective date of this AD, unless already accomplished.

ADDRESSES: The Balloon Works Service Bulletin No. B20, dated June 29, 1983, applicable to this AD, may be obtained from The Balloon Works, Rhyne Aerodrome, RFD 2, Statesville, NC 28677; Telephone (704)–878–9501. A copy of this Service Bulletin is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Jack Bentley, Airframe Branch, ACE-1290A, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763–7407.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an adjustment of the envelope jumper cords on certain Balloon Works Model 7B (Twelve Gore) Hot Air Balloons was published in the Federal Register on August 11, 1983 (48 FR 36468). The proposal resulted from reports of breakage of the jumper cords on the envelope of two of these hot air balloons due to the jumper cords being too short. Breakage of the jumper cords can result in leakage of the envelope vent valve and uncontrollable descent of the balloon. Interested persons have been afforded an opportunity to comment on the proposal. Two commenters responded. The first commenter, while he apparently does not object to the NPRM, states that Kevlar is unsuitable for the application. However, it is used on other Balloon Works models without the problems which have occurred on the Model Firefly 7B Hot Air Balloons. The second commenter's remarks are based on information furnished to him by the first commenter. He objects to the use of Kevlar. The FAA does not have information which indicates that Kevlar is unsuitable for use as jumper cords on Model Firefly 7B Hot Air Balloons. Therefore the FAA has not changed its position from the NPRM. There were no comments received on the cost determination. Accordingly, the proposal is adopted without change.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive.

The Balloon Works: Applies to Model Firefly 7B (Twelve Gore) (Serial Numbers F7B–009, F7B–011 through F7B–044, and F-7B–046 through F7B–080) Hot Air Balloons certificated in any category.

Compliance: Required within the next 10 hours time in service after the effective date of this AD, unless already accomplished. To prevent breakage of jumper cords, which may result in uncontrollable descent, accomplish the following:

(a) Lengthen each envelope jumper cord, shorten each centering cord, inflate envelope and examine valve fit and adjust, if necessary, in accordance with The Balloon Works Service Bulletin No. B20, dated June 29, 1983.

(b) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, FAA Central Region, 1075 Inner Loop Road, College Park, Georgia 30337.

This amendment becomes effective on April 9, 1984.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); § 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

Note.—The FAA has determined that this regulation only involves approximately 70 balloons at an approximate one-time cost of $50 for each balloon or a total one-time fleet cost of $3500. Therefore, I certify that this action (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 26, 1979); and (3) 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 final evaluation prepared for this action is contained in the regulatory docket.

Issued in Kansas City, Missouri, on February 22, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84-5490 Filed 2-29-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 81-RM-1-AD; Amdt. 39-4820]

Airworthiness Directives; Raven Industries Models S-40/A, S-50A, S55A, S-60A S-66A, RX-6, RX-7, and W100LB Hot Air Balloons

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 81-21-02, Amendment 39-4232 applicable to Raven Industries Models S-40A, S-50A, S-55A, S-60A, S-66A, RX-6, RX-7 and W100LB hot air balloons by exempting those balloons equipped with the updated FAA Approved Balloon Flight Manual dated April 15, 1983, from paragraph (A) of the AD, clarifies the language of the AD, and deletes detailed maintenance instructions and authorization for a student pilot to sign off the required inspection. Subsequent to the issuance of the original AD the inspections required by the AD have been incorporated in the Limitations Section of the Balloon Flight Manual

and detailed maintenance instructions made available in other documents. Also a recent revision to FAR 43 requires that the inspections required by the AD must be accomplished by the holder of at least a private pilot certificate. This amendment updates the AD to make it consistent with currently available manufacturer's data and regulatory requirements.

EFFECTIVE DATE: March 8, 1984.

Compliance: As prescribed in the body of the AD.

ADDRESSES: A copy of Raven Service Bulletin No. 112, dated March 16, 1983, may be obtained from Raven Industries, Inc., P.O. Box 1007, Sioux Falls, South Dakota 57117. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, FAA, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Payauys, ACE-120C, FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018; Telephone (312) 694-7426.

SUPPLEMENTARY INFORMATION: AD 81-21-02, Amendment 39-4232, (46 FR 50363), applicable to Raven Industries Models S-40A, S-50A, S-55A, S-60A, S-66A, RX-6, RX-7 and W100LB hot air balloons, requires inspection of the deflation panel hook pile fastener tape prior to each flight. Subsequent to the issuance of this AD, Raven incorporated the requirements of paragraph (A) of the AD in the pre-flight inspection procedures of the Raven Balloon Flight Manual, dated April 15, 1983. That would give those pilots performing these pre-flight inspections an approved alternate means of compliance with the AD. The FAA has determined that the alternate means of compliance is acceptable and provides a level of safety equivalent to that in the present AD. Also, in the interest of safety, the AD should be revised to clarify and remove detailed maintenance instructions contained therein. Therefore, the FAA is revising AD 81-21-02 to: (1) Exempt from paragraph (A) of the AD those balloons that are equipped with the lastest version of the FAA Approved Balloon Flight Manual dated April 15, 1983; (2) clarify the language used in the AD; (3) remove the detailed maintenance instructions from the AD and in their place reference a Raven Service Bulletin; and (4) bring into line with current requirements of FAR Part 43, those persons who are authorized to sign off the inspections required by this AD.

This amendment adds an alternate means of compliance and corrects an ambiguity in the AD which may have a negative impact on safety. Additionally the revision changes a paragraph which may cause an operator to violate an existing rule. Therefore, notice and public procedure hereon are unnecessary and impractical, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, AD 81-21-02, Amendment 39-4232, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13), is revised and reissued in its entirety as follows:

PART 39—[AMENDED]

Raven Industries.: Applies to Models S-40A, S-50A, S-55A, S-60A, S-66A, RX-6, RX-7 and W100LB hot air balloons, certificated in any category, which have deflation panels using continuous hook and pile fastener tape around the circumference except where the panel is sewn to the envelope.

Compliance: Required as indicated, unless already accomplished.

To prevent unwanted opening of the deflation panel, accomplish the following:

(A) On balloons not equipped with Raven FAA Approved Balloon Flight Manual dated April 15, 1983, before each inflation for the purpose of flight, verify the condition of the deflation panel as follows:

(1) Visually check the deflation panel hook and pile fastener tape.

(2) Remove debris and foreign matter from the tape and check for damage due to wear, or deterioration caused by heat.

(3) Check the tape for adequate retention capability by the following procedure:

(a) Mate several 15-20 inch sections firmly by hand around the circumference.

(b) Grasp the fabric firmly, approximately 12 inches on either side of and perpendicular to the mated portions, and apply a pull of approximately 20 pounds. A spring scale may be used to measure the load. If the fastener tape separates, it is unacceptable for flight.

(4) The checks required by paragraphs (A)(1) through (A)(3) of this AD may be accomplished by a person holding at least a private pilot certificate with a free balloon rating.

Note.—A maintenance record entry as prescribed by FAR 91.173 is required when complying with this AD.

(5) Whenever the hook and pile fastener tape is found unacceptable, inspect and repair according to Raven Service Bulletin No. 112, dated March 16, 1981, or Raven Instructions for Continued Airworthiness for Hot Air Balloons, dated December 23, 1981.

(B) On all balloons of the applicable models regardless of date of Approved Flight Manual installed, at intervals not to exceed 100 hours of balloon inflated-buoyant time or at each annual inspection, whichever occurs first, conduct a test of the hook and pile tape for adequate retention in accordance with Raven Service Bulletin No. 112.

(C) An equivalent method of complying with this AD may be used if approved by the Manager, Chicago Aircraft Certification Office, ACE-115C, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

This amendment becomes effective March 8, 1984.

This amendment revises Amendment 39-4232, AD 81-21-02, in its entirety.

(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); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89))

Note.—The FAA has determined that this document involves an amendment that provides an alternate means of compliance, corrects an ambiguity in the AD which may have a negative impact on safety and does not impose any additional burden on any person. Therefore, (1) it is not a major rule under Executive Order 12291, and (2) it is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because its anticipated impact is so minimal, it does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on February 21, 1984

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84-5431 Filed 2-23-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 23916; Amdt. No. 1263]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure indentification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air) weather.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

** * * Effective April 12, 1984*

Bermuda Dunes, CA—Bermuda Dunes, VOR RWY 29, Amdt. 1
Lincoln, CA—Lincoln Muni, VOR RWY 15, Amdt. 1
Waverly, IA—Waverly Muni, VOR-A, Amdt. 2
Mason, MI—Mason Jewett Field, VOR-A, Amdt. 1
Three Rivers, MI—Three Rivers Muni-Dr. Haines, VOR-A, Amdt. 8
Hallock, MN—Hallock Muni, VOR/DME RWY 31, Amdt. 4
Yazoo City, MS—Barrier Field, VOR/DME-A, Amdt. 5
Yazoo City, MS—Barrier Field, VOR/DME RWY 17, Amdt. 2
Rochester, NH—Skyhaven, VOR-A, Amdt. 2
Cedar City, UT—Cedar City Muni, VOR RWY 20, Amdt. 2

** * * Effective February 16, 1984*

Ardmore, OK—Ardmore Muni, VOR RWY 4, Amdt. 16

2. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

** * * Effective April 12, 1984*

Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain/, LOC BC RWY 11L, Amdt. 6
Poplar Bluff, MO—Earl Fields Memorial, SDF RWY 36, Amdt. 1

** * * Effective February 22, 1984*

St. Paul, MN—St. Paul Downtown Holman Fld, LOC RWY 30, Amdt. 9

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

** * * Effective May 10, 1984*

New Ulm, MN—New Ulm Muni, NDB RWY 13, Amdt. 3
Orr, MN—Orr Regional, NDB RWY 13, Amdt. 4

** * * Effective April 12, 1984*

Windsor Locks, CT—Bradley Intl, NDB RWY 6, Amdt. 24
Chicago, IL—Chicago-O Hare Intl, NDB RWY 9R, Amdt. 14
Ludington, MI—Mason County, NDB RWY 25, Amdt. 7
Three Rivers, MI—Three Rivers Muni-Dr. Haines, NDB RWY 27, Amdt. 6
Poplar Bluff, MO—Earl Fields Memorial, NDB RWY 36, Amdt. 1
Bowie, TX—Bowie Muni, NDB RWY 17, Amdt. 1
Bowie, TX—Bowie Muni, NDB RWY 35, Amdt. 1
Leesburg, VA—Leesburg Muni/Codfrey Field, NDB RWY 35, Amdt. 1
Clarksburg, WV—Benedum, NDB RWY 21, Amdt. 7

4. By amending § 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

** * * Effective April 12, 1984*

Windsor Locks, CT—Bradley Intl, ILS RWY 6, Amdt. 28

Windsor Locks, CT—Bradley Intl, ILS RWY 24, Amdt. 2
Chicago, IL—Chicago-O Hare Intl, ILS RWY 9R, Amdt. 12
Chicago, IL—Chicago-O Hare Intl, ILS RWY 27L, Amdt. 11
New Orleans, LA—Lakefront, ILS RWY 18R, Amdt. 7
Aberdeen, SD—Aberdeen Regional, ILS RWY 31, Amdt. 7
Clarksburg, WV—Benedum, ILS RWY 21, Amdt. 8

* * * *Effective February 22, 1984*

St. Paul, MN—St. Paul Downtown Holman Fld, MLS RWY 30 (Interim), Amdt. 5

* * * *Effective February 17, 1984*

Tampa, FL—Tampa Intl, ILS RWY 18L, Amdt. 35

* * * *Effective February 16, 1984*

Abilene, TX—Abilene Muni, ILS RWY 35R, Amdt. 3

5. By amending § 97.31 RADAR SIAPs identified as follows:

* * * *Effective April 12, 1984*

Detroit, MI—Willow Run, RADAR-1, Amdt. 4
Lansing, MI—Capital City, RADAR-1, Amdt. 10
Saginaw, MI—Tri City, RADAR-1, Amdt. 8

6. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *Effective April 12, 1984*

Waverly, IA—Waverly Muni, RNAV RWY 10, Amdt. 1

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this 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 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on March 2, 1984.

Note:—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Kenneth S. Hunt,
Director of Flight Operations.

[FR Doc. 84-5485 Filed 2-29-84; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 79P-0349]

Cheese and Cheese Products; Amendment to Permit Use of Antimycotics on Surface of Bulk Cheeses and to Provide for Declaration of Animal, Plant, and Microbial Enzymes as "Enzymes"; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date for compliance with the amended standards of identity for several cheeses to permit, during curing and storage, the use of safe and suitable antimycotics on the surface of bulk forms of the cheeses. FDA is also confirming the amendment of the standards to establish label declaration of ingredient requirements and to permit the label declaration of animal, plant, and microbial enzymes by the general term "enzymes," rather than by their specific common or usual name. The final rule amending these standards was published in the Federal Register of October 24, 1983 (48 FR 49012). This action is based on a petition filed by the National Cheese Institute.

DATES: Effective July 1, 1985, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may have begun December 23, 1983.

FOR FURTHER INFORMATION CONTACT: Johnnie G. Nichols, Bureau of Foods (HFF-215), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0101.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 24, 1983 (48 FR 49012), FDA issued a final rule amending the standards of identity for several cheeses to permit the use of safe and suitable antimycotics on the surface of bulk cheeses during curing and storage. FDA also established uniform provisions for the declaration of ingredients, and to permit enzymes of animal, plant, or microbial origin to be declared by the word "enzymes," rather than by the specific common or usual name of the enzyme. The cheese standards included in the final rule were for asiago fresh and asiago soft cheese (21 CFR 133.102), caciocavallo siciliano cheese (21 CFR 133.111), hard grating cheeses (21 CFR 133.148), hard cheeses (21 CFR 133.150), mozzarella cheese and scamorza cheese (21 CFR 133.155), low-moisture mozzarella and scamorza cheese (21 CFR 133.156), parmesan and reggiano cheese (21 CFR 133.165), provolone cheese (previously named provolone cheese and pasta filata cheese (see 48 FR 2736; January 21, 1983)) (21 CFR 133.181), and romano cheese (21 CFR 133.183). Cross-referenced standards of identity that are also affected by the final rule include those for asiago medium cheese (21 CFR 133.103), asiago old cheese (21 CFR 133.104), part-skim mozzarella and scamorza cheese (21 CFR 133.157), and low-moisture part-skim mozzarella and scamorza cheese (21 CFR 133.158).

Any person who would be adversely affected by the regulations could have, at any time on or before November 23, 1983, filed written objections to the final regulations and requested a hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received.

List of Subjects in 21 CFR Part 133

Cheese; Food standards.

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Foods (21 CFR 5.62), notice is given that the effective date for compliance with §§ 133.102, 133.111, 133.148, 133.150, 133.155, 133.156, 133.165, 133.181, and 133.183 as published in the Federal Register of October 24, 1983 (48 FR 49012) is July 1, 1985. Voluntary compliance with these regulations may have begun December 23, 1983.

Dated: February 24, 1984.

John M. Taylor,
Acting Director, Bureau of Foods.

[FR Doc. 84-5510 Filed 2-29-84; 8:45 am]
BILLING CODE 4160-01-M

21 CFR Part 177

[Docket No. 83F-0186]

Indirect Food Additives: Polymers; High Temperature Laminates

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of high-temperature laminates under increased processing temperature conditions. This action responds to a food additive petition filed by Morton Chemical, Division of Morton Thiokol, Inc.

DATES: Effective March 1, 1984; objections by April 2, 1984.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Clyde A. Takeguchi, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 8, 1983 (48 FR 31464), FDA announced that a petition (FAP 3B3723) had been filed by Morton Chemical, Division of Morton Thiokol, Inc., 2 North Riverside Plaza, Chicago, IL 60606, proposing that the food additive regulations be amended to provide for the safe use of high-temperature laminates fabricated from adhesives identified in § 177.1390(c)(2)(v) (21 CFR 177.1390(c)(2)(v)) by increasing the maximum procesing temperature from 121° C (250° F) to 135° C (275° F).

The agency recognizes that the operating temperature in a retort normally exceeds the temperature prescribed in a scheduled sterilization process by at most a few degrees Celsius under good manufacturing practice. Therefore, for purposes of determining compliance, FDA will consider that a process meets the 135° C (275° F) temperature limitation in the following circumstances: (1) The highest temperature prescribed in a scheduled sterilization process does not exceed 135° C (275° F); and (2) a scheduled sterilization process is designed so that the temperature occurring in actual operation does not exceed 135° C (275° F) by more than 3° C (5.4° F).

FDA has evaluated the data in the petition and other relevant material and concludes that the use of high-temperature laminates under the proposed expanded temperature conditions is safe and that § 177.1390 should be amended as set forth below.

This amendment reflects the revision of § 177.1390(c)(3)(i)(*a*) published in the Federal Register of April 8, 1983 (48 FR 15242). FDA is revising § 177.1390(c)(2)(v) by deleting the phrase "for use at temperatures not exceeding 121° C (250° F) and" and is revising paragraph (c)(3)(i)(*b*) to accommodate a new extraction requirement in paragraph (c)(3)(i)(*b*)(*2*) for laminates containing adhesives described in paragraph (c)(2)(v) and processed at the newly petitioned temperature limitation.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the potential environmental effects of this regulation as announced in the notice of filing published in the Federal Register. No new information or comments have been received that would alter the agency's previous determination that the action is of a type that does not individually or cumulatively have a significant impact on the human environment and that neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 177

Food additives, Incorporation by reference, Polymeric food packaging.

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Foods (21 CFR 5.61), Part 177 is amended in § 177.1390 by revising the introductory text of paragraph (c)(2)(v) and by revising paragraph (c)(3)(i)(*b*) to read as follows:

§ 177.1390 High-temperature laminates.

* * * * *

(c) * * *

(2) * * *

(v) Polyester-epoxy-urethane adhesives formulated from the following:

* * * * *

(3) * * *

(i) * * *

(*b*) For use at temperatures not to exceed 135° C (275° F): The container interior (food-contact side) shall be extracted with deionized distilled water at 135° C (275° F) for 1 hour.

(*1*) The chloroform-soluble fraction of the total nonvolatile extractives for containers using no adhesive, or adhesives listed in paragraph (c)(2) (i), (ii), and (iii) of this section shall not exceed 0.0020 milligram per square centimeter (0.013 milligram per square inch) as determined by a method titled "Determination of Nonvolatile Chloroform Soluble Residues in Retort Pouch Water Extracts," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (c)(3)(i)(*a*)(*1*) of this section.

(*2*) The chloroform-soluble fraction of the total nonvolatile extractives for containers using adhesives listed in paragraph (c)(2)(v) of this section shall not exceed 0.016 milligram per square centimeter (0.10 milligram per square inch) as determined by a method titled "Determination of Nonvolatile Chloroform Soluble Residues in Retort Pouch Water Extracts," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (c)(3)(i)(*a*)(*1*) of this section.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before April 2, 1984, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective March 1, 1984.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: February 17, 1984.

Richard J. Ronk,

Acting Director, Bureau of Foods.

[FR Doc. 84-5515 Filed 2-29-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Office of the Assistant Secretary for Community Planning and Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Parts 51, 111, 200, 241, 570, 883, 885, 886, and 3282

[Docket No. N-84-1349]

Announcement of Effective Dates

AGENCY: Office of the Secretary; Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Office of the Assistant Secretary for Community Planning and Development; and Office of the Assistant Secretary for Fair Housing and Equal Opportunity.

ACTION: Notice of announcement of effective dates for certain recent final rules.

SUMMARY: Section 7(o) of the Department of Housing and Urban Development Act requires HUD to wait thirty calendar days of continuous session of Congress before it makes a published rule effective. This notice announces the effective dates for certain recently published final rules. Thirty calendar days of continuous session of Congress have expired in the present Congress since these rules were published. For an explanation of subject matter on the rules, see "SUPPLEMENTARY INFORMATION".

DATES: For effective dates see "SUPPLEMENTARY INFORMATION".

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 7th Street, S.W., Washington, D.C. 20410, telephone No. (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The effective date provision of the published rules stated that the rules would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the rules' effectiveness would be published in the Federal Register. Thirty calendar days of continuous session of Congress have expired in the present Congress since these rules were published.

Accordingly, the purpose of this notice is to announce the effective dates for the rules listed below:

24 CFR Part 51: Siting of HUD-Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields, Final Rule published January 6, 1984 (49 FR 877), Docket No. R-83-774; FR-1187. Effective Date: March 5, 1984.

24 CFR Part 111: Fair Housing Assistance Program; Program Description and Eligibility Criteria, Final Rule published December 29, 1983 (48 FR 57272), Docket No. R-83-1082; FR-1763. Effective Date: March 5, 1984.

24 CFR Part 200: Use of Materials Bulletin No. 82, HUD Building Product Standards and Certification Program for Sealing Insulating Glass Units, Final Rule Published January 4, 1984 (49 FR 375), Docket No. R-83-1098; FR-1356. Effective Date: March 5, 1984.

24 CFR Part 200: Use of Materials Bulletin No. 39a, HUD Building Product Standards and Certification Program for Aluminum Windows, Storm Windows, Sliding Glass Doors and Storm Doors, Final Rule published January 4, 1984 (49 FR 376), Docket No. R-83-1101; FR-1405. Effective Date: March 5, 1984.

24 CFR Part 200: HUD Building Product Standards and Certification Program for Plastic Bathtub Units, Plastic Shower Receptors and Stalls, Plastic Lavatories, Plastic Water Closet Bowls and Tanks; Adoption of Use of Materials Bulletin No. 73a, Final Rule published January 4, 1984 (48 FR 377), Docket No. R-83-1100; FR-1358. Effective Date: March 5, 1984.

24 CFR Part 241: Requirement of Payment in Cash on Supplementary Loan Claims, Final Rule published December 28, 1983 (48 FR 57128), Docket No. R-83-1104; FR-1734. Effective Date: March 5, 1984.

24 CFR Part 570: Categorical Program Settlement Fund, Final Rule published December 2, 1983 (48 FR 54339), Docket No. R-83-1130; FR-1712. Effective Date: March 5, 1984.

24 CFR Part 883: Section 8 Housing Assistance Payments Program; State Housing Agencies, Final Rule published November 8, 1983 (48 FR 51296), Docket No. R-83-1003. Effective Date: March 5, 1984.

24 CFR Part 885: Housing for the Elderly to Implement Cost Savings Procedures, Final Rule published November 4, 1983 (48 FR 50888), Docket No. R-83-1129. Effective Date: March 5, 1984.

24 CFR Part 885: Loans for Housing for the Elderly or Handicapped; Fiscal Year 1984 Interest Rate, Final Rule published December 23, 1983 (48 FR 56748), Docket No. R-83-1120; FR-1848. Effective Date: March 5, 1984.

24 CFR Part 886: Section 8 Housing Assistance Payments Program; Special Allocations, Final Rule published December 27, 1983 (48 FR 56949), Docket No. R-83-1099; FR-1795. Effective Date: March 5, 1984.

24 CFR Part 3282: Manufactured Home Construction and Safety Standards; Manufactured Home Procedural and Enforcement Regulations, Final Rule published January 16, 1984 (49 FR 1966), Docket No. R-84-926; FR-1443. Effective Date: March 5, 1984.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 27, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 84-5620 Filed 2-29-84; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 11

Display of Office of Management and Budget Control Numbers for Reporting Requirements Without Forms

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Technical amendments.

SUMMARY: This document amends certain Department of Labor regulations to include a control number assigned by the Director of the Office of Management and Budget (OMB). The Paperwork Reduction Act requires display of an OMB control number on all information collection provisions.

EFFECTIVE DATES: March 1, 1984.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 631, Ballston Towers #3, 4015 Wilson Boulevard, Arlington, Virginia 22203 (703) 235-1910.

SUPPLEMENTARY INFORMATION: Part 11 of Title 30 of the Code of Federal Regulations contains requirements concerning the joint approval of protective respirator devices by the

Department of Labor's Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH).

Under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the Office of Management and Budget has assigned the following control numbers to the information collection requirements in 30 CFR Part 11 listed below.

Text of Amendments

PART 30—[AMENDED]

Following the text of each section cited in the following table, add parenthetically the OMB number listed:

Regulatory citation	OMB No.
30 CFR 11.10, 11.41 and 11.43	0920-0109

Dated: February 27, 1984.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 84-5551 Filed 2-29-84; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Consideration of Material Submitted Relating to the Status of the Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Reopening of public comment period.

SUMMARY: On March 10, 1983, the Director, OSM, announced that he had reason to believe that Oklahoma may not be implementing, administering, maintaining or enforcing its approved program to regulate surface coal mining and reclamation operations. Following a June 15, 1983, informal conference between OSM and the Oklahoma Department of Mines (ODOM), the Director on November 17, 1983, gave notice that he still had reason to believe that Oklahoma 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 Oklahoma program in accordance with the provisions of 30 CFR 733.12(d). The public hearing was held on December 21, 1983, in Muskogee, Oklahoma. The public comment period announced in the Director's notice extended through December 30, 1983.

Because OSM requested ODOM to provide additional information in response to questions raised at the hearing, the Director decided to give the State until January 11, 1984, to submit the requested information and the public until January 19, 1984, to provide comments on that and all other information contained in the Oklahoma administrative record.

Because of additional material submitted to OSM concerning the status of the Oklahoma permanent regulatory program since the close of the public comment period and the importance of the decisions that must be made affecting the Oklahoma program, the Director has decided to provide the public additional time to submit comments on all information provided to OSM since January 19, 1984, the close of the previous comment period.

DATE: Public comments must be received before 4:00 p.m. on March 12, 1984 in order to be considered in the Director's findings on the status of the Oklahoma permanent regulatory program.

ADDRESSES: Written comments should be sent to: Office of Surface Mining, Room 3432, 333 West Fourth Street, Tulsa, Oklahoma 74103.

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, Administrative Record Office, Room 5315, 1100 L Street, NW., Washington, D.C. 20240, Telephone: (202) 343-4728

Office of Surface Mining, Tulsa Field Office, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103, Telephone: (918) 581-7927

Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521-3659.

FOR FURTHER INFORMATION CONTACT:

Carl C. Close, Special Assistant to the Assistant Director, Program Operations and Inspection, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone: (202) 343-4225;

Robert L. Markey, Tulsa Field Office, Director, Office of Surface Mining, Room 3432, 333 West Fourth Street, Tulsa, Oklahoma 74103; Telephone: (918) 581-7927.

SUPPLEMENTARY INFORMATION: On March 10, 1983, the Director, OSM, notified the Governor of Oklahoma that he had reason to believe that the State may not be implementing, administering, maintaining or enforcing its approved program to regulate surface coal mining and reclamation operations (see Administrative Record No. OK-458). The Director cited problems in Oklahoma's program implementation in several areas including the designation of lands as unsuitable for mining, permitting, inspection and enforcement, administrative procedures and records, and Oklahoma's ability to meet its conditions of approval. A more detailed account of the Director's concerns over the status of Oklahoma's implementation of its program can be found in the May 25, 1983 Federal Register at 48 FR 23414.

On April 14, 1983, ODOM responded to the Director's March 10, 1983 letter by providing additional written information (OK-461). On April 17, 1983, ODOM requested an informal conference with OSM under the provisions of 30 CFR 733.12(c). *See* OK-465. The Director agreed to Oklahoma's request, notified the public on May 25, 1983 (48 FR 23414), and subsequently held an informal conference with Oklahoma officials on June 15, 1983, in Oklahoma City. A transcript of the informal conference has been placed in the Administrative Record (OK-483).

At the informal conference, OSM requested ODOM to provide additional information on many of OSM's concerns. ODOM submitted additional information on July 14, 1983 (OK-521), August 25, 1983 (OK-508) and November 8, 1983 (OK-522).

Meetings were held between OSM and the State on October 5 and 12, 1983, to discuss OSM's concerns and the State's progress in resolving problems (OK-517 and OK-520).

On November 10, 1983, the Director notified the Governor of Oklahoma that he still had reason to believe that the State is not adequately implementing, administering, maintaining or enforcing its approved 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* OK-526. The Director's letter was followed by a Federal Register notice published on November 17, 1983 (48 FR 52298) and a letter from OSM to ODOM detailing the remaining areas of concern and topics to be discussed at the public hearing. *See* OK-528 and OK-529.

OSM held a public hearing on December 21, 1983, in Muskogee, Oklahoma and provided the public an opportunity to comment through

December 30, 1983, on the status of Oklahoma's program implementation.

The Director then extended the public comment period until January 19, 1984, due to OSM's request for additional information from ODOM. A transcript of the testimony received at the public hearing (OK-551), together with all written information, is contained in the administrative record.

Since January 19, 1984, OSM has received additional material addressing the status of Oklahoma's permanent regulatory program. This material consists of pubic comments, minutes from several meetings, telephone conversation records and several documents generated by OSM. The documents available for review and comment begin with document OK-580. Therefore, OSM is reopening the comment period for an additional 15 days to allow the public sufficient time to review and comment on the above documents.

The Director'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, written presentations and written comments, the Director will publish his findings on the status of Oklahoma's program implementation 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.

(Sec. 503, Pub. L. 95-87, 91 Stat. 407 (30 U.S.C. 1253))

Dated: February 27, 1984.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 84-5530 Filed 2-29-84; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Reg. 6010.8-R, Amdt. No. 23]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Certified Clinical Social Workers

AGENCY: Office of the Secretary, DoD.

ACTION: Amendment of final rule.

SUMMARY: This final rule amends DoD Regulation 6010.8-R (32 CFR 199) which implements the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). This amendment implements language contained in the Department of Defense Appropriation Act, 1983, Pub. L. 97-377, which authorizes CHAMPUS payments to certified clinical social workers who practice independent of physician referral and supervision.

DATES: This amendment is retroactively effective to December 21, 1982; however, we will accept public comments until April 2, 1984. A document advising of any revisions prompted by public comments will be published in the Federal Register no later than 90 days following the end of the comment period.

FOR FURTHER INFORMATION CONTACT: Reta M. Michak, Policy Branch, OCHAMPUS, telephone (303) 361-4019.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the Federal Register on April 4, 1977, (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title.

In FR Doc 82-25252 appearing in the Federal Register on September 15, 1982 (47 FR 40644), the Office of the Secretary of Defense published for public comment a proposed amendment regarding benefits for the treatment of mental disorders that included the standards for CHAMPUS authorization of clinical social workers. As a result of this publication, several comments were received from interested organizations and agencies.

1. One of the comments noted an apparent conflict in the two sections referencing the criteria for clinical social workers. The first section, in paragraph 3, section (b)(36) on page 40646 of the proposed amendment, required licensure of certification by the jurisdiction where practicing and satisfaction of the criteria in § 199.12. The second section, paragraph 9, section (c)(3)(iii)(f)(4) on page 40649 of the proposed amendment, required licensure of certification by the jurisdiction where practicing or certification by a national professional organization if the jurisdiction does not provide licensure or certification. The first section has been changed to avoid any conflict.

2. There were also several suggestions that clinical social workers be recognized as independent providers. In accordance with the provisions of the Department of Defense Appropriation Act, 1983, certified clinical social workers have been listed as authorized independent CHAMPUS providers and this amendment changes the Regulation to effect this provision.

3. Another commentor recommended that the 2-year requirement for the master's program be deleted. This recommendation has been accepted.

4. Several commentors also noted that the Council on Social Work Education is not affiliated with the National Association of Social Workers; it is an independent organization.

5. One individual suggested that the term "Clinical Social Worker" be changed to "Clinical or Psychiatric Social Worker." We have not adopted this change as both the National Federation of Societies for Clinical Social Work and the National Association of Social Workers have concurred with use of the term "Clinical Social Worker."

The Department of Defense Appropriation Act, 1981 (Pub. L. 96-527), directed CHAMPUS to conduct a test reimbursement program for services provided by clinical social workers independent of physician referral or supervision. The test period was extended through September 30, 1982, by the Department of Defense Appropriation Act, 1982, and continued from October 1 through December 20, 1982, based upon the provisions of a Congressional Continuing Resolution.

During the test period, a total of 6,200 claims for services provided by clinical social workers were received and processed by the fiscal intermediaries. For the final reporting period, April 1 through September 30, 1982, 330 clinical social workers submitted claims for services provided to 1,577 beneficiaries. A majority of these claims (85%) were for individual psychotherapy sessions of 45 to 50 minutes. Comparing the prevailing fee profiles for individual psychotherapy sessions provided by psychiatrists to the same therapy provide by clinical social workers, the test reimbursement program demonstrated that the prevailing fee profiles for the clinical social workers were generally lower. The Senate, Report on the DoD Appropriation Bill, 1983, stated, in part, that "Based on the successful pilot program the Committee has included bill language to permit direct reimbursement of clinical social workers who provide mental health services. . . . No quality of care problems have arisen, and reimbursement of clinical social workers costs less than the traditional physician gate-keeper approach."

The Department of Defense Appropriation Act, 1983, removed the test status of the reimbursement program thereby allowing CHAMPUS to

provide for the direct reimbursement of certified clinical social workers.

CHAMPUS rules regarding who may be considered an independent professional provider, with no requirement for physician supervision, derive from language contained in the annual Defense Appropriation Act. To the extent that the Appropriation Act restrictions permit us to consider a provider to be independent of physician supervision, we are taking the general position in the notice that we will provide payment for services provided to eligible beneficiaries if: 1. the service is a benefit of CHAMPUS and meets all requirements for coverage; 2. the provider of the care is a CHAMPUS-authorized provider in accordance with section 199.12 of Part 199; and 3. the provider's state license permits the rendering of the specific service.

All instructions we issue to claims processors and professional reviewers to implement this amendment will emphasize that medical services must be rendered by or under a physician's supervision and that lack of physician involvement when demanded by the circumstances of the case is a basis for denial of payment on quality grounds.

This amendment is retroactively effective to December 21, 1982. This amendment is being published in final form without a Notice of Proposed Rulemaking since the standards for authorization of clinical social workers were published as part of a proposed amendment on mental disorders. Comments received as a result of that proposed rule were considered in the development of this final rule. However, for a period of 30 days following the date of the publication of this amendment in the Federal Register, we will accept public comments and, where appropriate, will revise the amendment. A notice advising of any revisions prompted by public comments will be published in the Federal Register no later than 90 days following the end of the comment period. Written public comments must be received on or before April 2, 1984.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR Chapter I is amended as follows:

PART 199—IMPLEMENTATION OF THE CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

1. Section 199.8 is amended by adding a new paragraph (b)(36), Clinical Social Worker, and redesignating existing paragraphs (b)(36) through (b)(180) as (b)(37) through (b)(181)

§ 199.8 Definitions

* * * * *

(b) * * *

(36) *Clinical Social Worker.* "Clinical Social Worker"means an individual who is licensed or certified as a clinical social worker and meets the criteria of § 199.12 of this part.

* * * * *

2. Section 199.12 is amended by adding a new paragraph (c)(3)(iii)(*f*), redesignating the existing paragraph (c)(3)(iii)(*f*) as paragraph (c)(3)(iii)(*g*), removing the existing paragraph (c)(3)(iii)(*e*)(*4*), and redesignating the existing paragraphs (c)(3)(iii)(*e*)(*5*) and (*6*) as paragraph (c)(3)(iii)(*g*)(*4*) and (*5*).

§ 199.12 Authorized providers.

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(*f*) *Certified Clinical Social Workers* A clinical social worker may provide covered services independent of physician referral and supervision, provided the clinical social worker meets the following criteria:

(*1*) Is licensed or certified as a clinical social worker by the jurisdiction where practicing; or, if the jurisdiction does not provide for licensure or certification of clinical social workers, is certified by a national professional organization offering certification of clinical social workers; and

(*2*) Has at least a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education; and

(*3*) Has had a minimum of two years or three thousand hours of post-master's degree supervised clinical social work practice under the supervision of a master's level social worker in an appropriate clinical setting, as determined by the Director, OCHAMPUS, Or a designee.

Note.—Patients' organic medical problems must receive appropriate concurrent management by a physician.

* * * * *

(10 U.S.C. 1079, 1086: 5 U.S.C. 301)

M.S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

February 24, 1984.

[FR Doc. 84-5368 Filed 2-29-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

Ice Navigation Season; Northern Chesapeake Bay and Tributaries; Termination

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination of Ice Navigation Season.

SUMMARY: The Ice Navigation Season Regulated Navigation Area (RNA) on the northern portion of Chesapeake Bay and its tributaries, including the Chesapeake and Delaware Canal is terminated effective 22 February 1984. The regulations for this Regulated Navigation Area, found in 33 CFR 165.503, published in the Federal Register May 19, 1983 (48 FR 22543), state that the RNA would be placed in effect and terminated at the direction of the Captain of the Port, Baltimore, MD by notice in the Federal Register. The Regulated Navigation Area was placed in effect by Federal Register Notice of January 5, 1984 (49 FR 583) and is hereby terminated. The purpose of this Regulated Navigation Area was to enhance the safety of navigation in the affected waters. It required operators of certain vessels to be aware, during their vessel's transit of the Regulated Navigation Area, of currently effective Ice Navigation Season Captain of the Port Orders issued by the Captain of the Port, Baltimore, Maryland.

DATE: Effective Termination Date: February 22, 1984.

FOR FURTHER INFORMATION CONTACT: LCDR L. H. GIBSON, Port Operations Officer, USCG MSO Baltimore, Maryland at (301) 962-5105.

J. C. Carlton,

Captain, U.S. Coast Guard, Captain of the Port, Coast Guard Marine Safety Office, U.S. Customhouse, 40 South Gay Street, Baltimore, Maryland 21202.

[FR Doc. 84-5539 Filed 2-29-84; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

42 CFR Part 37

Amendment to Specifications for Medical Examinations of Underground Coal Miners

AGENCY: National Institute for Occupational Safety and Health

(NIOSH), Centers for Disease Control, PHS, HHS.

ACTION: Final rule.

SUMMARY: This rule adopts the 1980 revision of the International Labor Office (ILO) system for classifying radiographs (X-rays) of the pneumoconioses. The 1980 system has now become the recognized international standard for classifying this type of disease. Adoption of the revised classification system enables X-ray readers in the Department's medical surveillance program for underground coal miners to classify miners' chest X-rays more accurately in accordance with the latest standards.

EFFECTIVE DATE: April 2, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Mitzie Martin, Chief, Receiving Center Section, Examinations Processing Branch, Division of Respiratory Disease Studies, NIOSH, 944 Chestnut Ridge Rd., Morgantown, WV 26505. Phone (304) 291-4301 or FTS 923-4301.

SUPPLEMENTARY INFORMATION: This final rule implements revisions proposed in a Notice of Proposed Rulemaking (NPRM) published in the Federal Register on January 12, 1983 (48 FR 1321), to amend Part 37 of Title 42, Code of Federal Regulations. The NPRM proposed to adopt the 1980 revision of the ILO system for classifying X-rays of the pneumoconioses. Interested persons were invited to comment on the proposed amendment. Only two comments were received and are discussed below.

Discussion of Comments

An engineering consultant requested that information be presented on the apparent differences in the disease prevalence rates obtained from each classification system's separate interpretations of coal miners' chest X-rays. A direct comparison was made of film interpretations from systems developed by the ILO in 1959 and by a Working Committee of the International Union Against Cancer in 1968 and published in the Journal of the American Medical Association, June 26, 1972, Vol. 220, No. 13. The removal of category Z (suspect pneumoconiosis) resulted in the later (1968) system having a significantly greater proportion of positive cases. Since 1968, there have been two revisions (1971 and 1980). With these later revisions, the profusion scale for pneumoconioses has remained intact, extending even to the subcategories of the pneumoconioses. In fact, many of the same examples of mid-category cases have been carried through to the 1980 revision. Thus, no dramatic differences which could be attributed to changes in classification systems exist. NIOSH also performed two reading trials. The first trial involved films from round two of the National Coal Study (1973-1975), while the second trial involved films from a surface mine study conducted in 1972. Both trials showed no appreciable difference between classification systems in the profusion of coal workers' pneumoconiosis (CWP) in the samples studied. For this reason, rereading all films on file would be costly and of little value. Differences in prevalence of CWP between rounds of examinations are mostly attributable to two factors: Reader variability and a true difference in disease. All film pairs, triads, etc., involved in assessing change in disease (progression) over a specific timeframe have been and will continue to be interpreted using the 1980 classification system.

The second comment was from a representative of a radiology organization suggesting several technical changes in the language of the proposed rule, all of which have been incorporated in the final rule.

The Department of Health and Human Services has determined that this amendment will not significantly impact on a substantial number of small entities and, therefore, does not require preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act, Pub. L. 96-354.

The Department also has determined that this amendment is not a "major rule" under Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more, result in significant adverse effects in competition, nor otherwise meet the thresholds established in the Executive Order. Therefore, preparation of a regulatory impact analysis is not required.

List of Subjects in 42 CFR Part 37

Health care, Lung diseases, Medical research, Mine Safety and Health, Miners, X-rays.

Part 37 of Title 42, Code of Federal Regulations, is hereby amended as set forth below.

Dated: November 22, 1983.

James F. Dickson,

Acting Assistant Secretary of Health.

Approved: February 8, 1984.

Margaret M. Heckler,

Secretary.

PART 37—[AMENDED]

42 CFR Part 37 is amended as follows:

1. the authority citation for Part 37 reads as follows:

Authority: Sec. 203, 83 Stat. 763; 30 U.S.C. 843.

2. In the Table of Contents, the title of § 37.51 is revised to read as follows:

Sec.

* * * * *

37.51 Proficiency in the use of systems for classifying the pneumoconioses.

* * * * *

3. In § 37.2, paragraph (f) is revised to read as follows:

§ 37.2 Definitions.

* * * * *

(f) "ILO-U/C Classification" means the classification of radiographs of the pneumoconioses devised in 1971 by an international committee of the International Labor Office and described in "Medical Radiography and Photography," volume 48, No. 3, December 1972. "ILO Classification" means the classification of radiographs of the pneumoconioses revised in 1980 by an international committee of the International Labor Office and described in "Medical Radiography and Photography" volume 57, No. 1, 1981, and in ILO publication 22 (revised 1980) from the ILO Occupational Safety and Health Series.

* * * * *

4. In § 37.3, paragraph (b)(3) is revised to read as follows:

§ 37.3 Chest roentgenograms required for miners.

* * * * *

(b) * * *

(3) A third chest roentgenogram 2 years following the second chest roentgenogram if the miner is still engaged in underground coal mining and if the second roentgenogram shows evidence of category 1, category 2, category 3 simple pneumoconioses, or complicated pneumoconioses (ILO Classification).

* * * * *

5. § 37.7, paragraph (a) is revised to read as follows:

§ 37.7 Transfer of affected miner to less dusty area.

(a) Any miner who, in the judgment of the Secretary based upon the interpretation of one or more of the miner's chest roentgenograms, shows category 1 (1/0, 1/1, 1/2), category 2 (2/1, 2/2, 2/3), or category 3 (3/2, 3/3, 3/4) simple pneumoconioses, or complicated pneumoconioses (ILO Classification) shall be afforded the option of transferring from his or her position to another position in an area of the mine

where the concentration of respirable dust in the mine atmosphere is not more than 1.0 mg/m³ of air, or in such level is not attainable in the mine, to a position in the mine where the concentration of respirable dust is the lowest attainable below 2.0 mg/m³ of air.

* * * * *

6. Section 37.50 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 37.50 Interpreting and classifying chest roentgenograms.

(a) Chest roentgenograms shall be interpreted and classified in accordance with the ILO Classification system and recorded on a Roentgenographic Interpretation Form (Form CDC/NIOSH (M)2.8).

(b) Roentgenograms shall be interpreted and classified only by a physician who regularly reads chest roentgenograms and who has demonstrated proficiency in classifying the pneumoconioses in accordance with § 37.51.

(c) All interpreters, whenever interpreting chest roentgenograms made under the Act, shall have immediately available for reference a complete set of the ILO International Classification of Radiographs for Pneumoconioses, 1980.

Note.— This set is available from the International Labor Office, 1750 New York Avenue, NW., Washington, D.C. 20006 (Phone: 202/376-2315).

* * * * *

7. Section 37.51 is amended by revising the section heading and the introductory text of paragraph (a)(2), paragraphs (a)(2)(ii), and (b)(2) to read as follows:

§ 37.51 Proficiency in the use of systems for classifying the pneumoconioses.

(a) * * *

(2) Physicians who desire to be "A" readers must demonstrate their proficiency in classifying the pneumoconioses by either:

* * * * *

(ii) Satisfactory completion, since June 11, 1970, of a course approved by ALOSH on the ILO or ILO-U/C Classification systems or the UICC/Cincinnati classification system. As used in this subparagraph, "UICC/Cincinnati classification" means the classification of the pneumoconioses devised in 1968 by a Working Committee of the International Union Against Cancer.

(b) * * *

(2) Proficiency in evaluating chest roentgenograms for roentgenographic quality and in the use of the ILO Classification for interpreting chest roentgenograms for pneumoconiosis and other diseases shall be demonstrated by those physicians who desire to be "B" readers by taking and passing a specially designed proficiency examination given on behalf of or by ALOSH at a time and place specified by ALOSH. Each physician must bring a complete set of the ILO standard reference radiographs when taking the examination. Physicians who qualify under this provision need not be qualified under paragraph (a) of this section.

* * * * *

8. In § 37.52, paragraph (b) is revised to read as follows:

§ 37.52 Method of obtaining definitive interpretations.

* * * * *

(b) Two interpreters shall be considered to be in agreement when they both find either stage A, B, or C complicated pneumoconiosis, or their findings with regard to simple pneumoconiosis are both in the same major category, or are within one minor category (ILO Classification 12-point scale) of each other. The higher of the two interpretations shall be reported.

[FR Doc. 84-5446 Filed 2-29-84; 8:45 am]
BILLING CODE 4160-19-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This final rulemaking implements Secretarial Order No. 3092, dated April 26, 1983, which abolished the Board of Surface Mining and Reclamation Appeals and transferred its functions to the Board of Land Appeals. Secretarial Order No. 3092 was published on May 18, 1983, at 48 FR 22370. This rulemaking also notifies the public of organizational changes in the Office of the Solicitor, Division of Surface Mining, and the Office of Surface Mining Reclamation and Enforcement pertinent to service and notice requirements in administrative hearings and appeals under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

EFFECTIVE DATE: March 1, 1984.

ADDRESS: Inquiries or suggestions may be sent to: Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Alfred F. Jahns, 703-235-3750.

SUPPLEMENTARY INFORMATION: This final rulemaking implements internal organizational changes only and does not effect any substantive changes in the opportunities for administrative review provided under SMCRA. Because of the limited, procedural purpose of the rulemaking, the Department did not propose the rulemaking for public comment, and the rule shall be effective on the date of its publication (*see* U.S.C. 553).

The author of this rulemaking is Alfred F. Jahns, Office of Hearings and Appeals. **Classification**

The Department of the Interior has determined that this rulemaking is not "major" for the purposes of E.O. 12291 and certifies that the rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). **Paperwork Reduction**

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). **Environmental Impact Statement**

This rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, no detailed statement is required under section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332(2)(c)).

List of Subjects in 43 CFR Part 4

Administrative practice and procedures, Surface mining.

Under the authority of section 525 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1275, and section 301 of the Administrative Procedure Act, 5 U.S.C. 301, the provisions of 43 CFR Part 4, Subparts A and L, are amended as set forth below

Dated: February 14, 1984.

J. J. Simmons III,

Under Secretary.

PART 4—[AMENDED]

Subpart A—General; Office of Hearings and Appeals

1. In § 4.1, paragraph (b)(3) is revised paragraph (b)(4) is removed and paragraph (b)(5) is redesignated as (b)(4) to read as follows:

§ 4.1 Scope of authority; applicable regulations.

* * * * *

(b) * * *

(3) *Board of Land Appeals.* The Board decides finally for the Department appeals to the head of the Department from decisions rendered by Departmental officials relating to: (i) The use and disposition of public lands and their resources, including land selections arising under the Alaska Native Claims Settlement Act, as amended; (ii) the use and disposition of mineral resources in certain acquired lands of the United States and in the submerged lands of the Outer Continental Shelf; and (iii) the conduct of surface coal mining under the Surface Mining Control and Reclamation Act of 1977. Special procedures for hearings, appeals and contests in public land cases are contained in Subpart E of this part; special procedures for hearings and appeals under the Surface Mining Control and Reclamation Act of 1977 are contained in Subpart L of this part.

* * * * *

Subpart L—Special Rules Applicable to Surface Coal Mining Hearings and Appeals

2. In § 4.1100, paragraph (c) is revised to read as follows:

§ 4.1100 Definitions.

* * * * *

(c) "Board" means the Board of Land Appeals in the Office of Hearings and Appeals.

* * * * *

3. In § 4.1107, paragraph (c) is revised to read as follows:

§ 4.1107 Filing of documents.

* * * * *

(c) Any notice of appeal, petition for review or other documents in a proceeding to be conducted or being conducted by the Board shall be filed, by hand or by mail, with the Board of Land Appeals, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Va. 22203.

* * * * *

4. In § 4.1109, paragraph (a) is revised to read as follows:

§ 4.1109 Service.

(a) Any party initiating a proceeding in OHA under the Act shall serve copies of the initiating documents on the Field or Regional Solicitor, Division of Surface Mining, U.S. Department of the Interior, representing OSM in the state in which the minesite is located and on any other statutory parties under § 4.1105. The addresses and telephone numbers of the field and regional solicitors follow.

For cases arising in Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and West Virginia: Office of the Field Solicitor, U.S. Department of the Interior, 1000 Liberty, Avenue, Pittsburgh, Pennsylvania 15222, 412-644-4455.

For cases arising in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia: Office of the Field Solicitor, U.S. Department of the Interior, P.O. Box 15008, Knoxville, Tennessee 37901, 615-673-4216.

For cases arising in Arkansas, Iowa, Kansas, Louisiana, Missouri, Nebraska, Oklahoma, and Texas: Office of the Regional Solicitor, U.S. Department of the Interior, P.O. Box 3156, Tulsa, Oklahoma 74101, 918-581-7502.

For cases arising in Alaska, Hawaii, Idaho, Oregon, Montana, Minnesota, North Dakota, South Dakota, Washington, Wisconsin, and Wyoming: Office of the Regional Solicitor, U.S. Department of the Interior, Denver Federal Center, P.O. Box 25007, Denver, Colorado 80225, 303-234-6781.

For cases arising in Arizona, California, Colorado, Nevada, New Mexico, and Utah: Office of the Field Solicitor, U.S. Department of the Interior, P.O. Box 1042, Santa Fe, New Mexico 87504, 505-988-6200.

* * * * *

5. In § 4.1266, paragraph (b)(2) is revised to read as follows:

§ 4.1266 Determination on application concerning an order of cessation issued pursuant to section 521(a)(2) or section 521(a)(3) of the Act.

* * * * *

(b)* * *

(2) The application shall include an affidavit stating that telephone notice has been given to the field office of OSM serving the state in which the minesite subject to the order is located. The telephone notice shall identify the mine, the mine operator, the date and number of the order from which relief is requested, the name of the OSM inspector involved, and the name and telephone number of the applicant. OSM's field offices and their telephone numbers follow.

Alabama Field Office (also serving Georgia): 205-254-0913.
Illinois Field Office: 217-492-4488.
Indiana Field Office: 317-269-2600.
Kentucky Field Office: 606-233-7327.
Missouri Field Office (also serving Iowa, Kansas and Nebraska): 816-374-5527.
New Mexico Field Office: 505-766-1486.
Ohio Field Office (also serving Michigan): 614-866-0578.
Oklahoma Field Office (also serving Arkansas, Louisiana and Texas): 918-581-7927.
Pennsylvania Field Office (also serving Massachusetts and Rhode Island): 717-782-4036.
Tennessee Field Office: 615-673-4504.
Virginia Field Office: 703-523-4303.
West Virginia Field Office: 304-347-7158.
Wyoming Field Office (also serving Alaska, Idaho, Montana, North Dakota, Oregon, South Dakota and Washington): 307-261-5824.

* * * * *

6. In § 4.1282, paragraph (a) is revised to read as follows:

§ 4.1282 Appeals; how taken.

(a) A person appealing under this section shall file a written notice of appeal with the office of the OSM official whose decision is being appealed and at the same time shall send a copy of the notice to the Board of Land Appeals, 4015 Wilson Boulevard, Arlington, Va. 22203.

* * * * *

[FR Doc. 84-5579 Filed 2-23-84; 8:45 am]
BILLING CODE 4310-10-M

Bureau of Land Management

43 CFR Public Land Order 6523

[F-81398]

Alaska; Public Land Order No. 6477; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct the errors in acreage, land descriptions, and the last paragraph in Public Land Order No. 6477 of September 29, 1983.

EFFECTIVE DATE: March 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, Alaska State Office, 907-271-3240.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The land description in Public Land Order No. 6477 of September 29, 1983, in FR Doc. 83-27140, published on pages 45395 through 45401 in the issue of Wednesday, October 5, 1983, it is corrected as following:

In summary, on page 45395, second column, last paragraph, 3rd line, which reads "mining approximately 5,697,148 acres of" is corrected to read "mining approximately 5,698,508 acres of"; the 5th line which reads "unsurveyed lands. About 4,421,340 acres" is corrected to read "unsurveyed lands. About 4,420,700 acres."

In the summary, on page 45395, third column, the 1st line, which reads "2,560,997 acres will be opened to permit" is corrected to read "2,560,357 acres will be opened to permit."

In the legal descriptions on page 45398, third column under T. 6 S., R. 20 W., the 2nd line, which reads "22 to 27, inclusive; and secs. 34, 35, and 36" is corrected to read "23 to 27, inclusive; and secs. 34, 35, and 36."

Under T. 7 S., R. 21 W., the 1st line, which reads "Secs 12 to 20, inclusive; secs. 17 and 18;" is corrected to read "Secs. 12, 13, 14, 17, and 18;".

On page 45399, second column, under T. 4., R. 28 W., the 9th line, which reads "approximately 950,374 acres." is corrected to read "approximately 949,734 acres."

At the end of the legal description on page 45400, first column, the line reading "aggregate approximately 5,697,148 acres" is corrected to read "aggregate approximately 5,696,508 acres."

On page 45400, second column, 4th paragraph, 5th line, which reads "N., R. 13 W., Kateel River Meridian." is corrected to read "N., R. 13 E., Kateel River Meridian."

On page 45401, first column, 3rd paragraph, the 2nd line, which reads "paragraph 2 should be addressed to the" is corrected to read "paragraphs 2 and 4 should be addressed to the."

Garrey E. Carruthers,

Assistant Secretary of the Interior.

February 22, 1984.

[FR Doc. 84-5631 Filed 2-29-84; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 162

[CGD 83-050]

Independent Laboratory

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising its specifications for portable fire extinguishers by adding two additional laboratories to the list of independent laboratories. The present list has only one laboratory that is listed as an independent laboratory to perform or supervise approval or production inspection or tests of portable fire extinguishers. The inclusion of the two additional laboratories will provide manufacturers a wider choice for the selection of an independent laboratory for the testing, listing, and labeling of their portable fire extinguishers.

EFFECTIVE DATE: March 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Klaus Wahle, Office of Merchant Marine Safety (G-MVI-3/24), Room 2412, Coast Guard Headquarters 2100 Second St., SW., Washington, D.C. 20593, (202) 426-1444. Normal office hours are between 7 a.m. and 5 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Subchapters C,D,H,I, I-A, O and T of Title 46 of the Code of Federal Regulations, require the carriage of Coast Guard approved fire extinguishers aboard commercial vessels and pleasure craft. The specifications for portable fire extinguishers, 46 CFR Subpart 162.028, require listing and labeling by a Coast Guard accepted laboratory.

The only laboratory currently listed is Underwriters Laboratories, Inc. (UL). UL is accepted for testing, listing, and labeling dry, chemical, halon, CO_2, water, and foam type portable fire extinguishers. This document adds Underwriters' Laboratories of Canada to the list. Factory Mutual Research Corp. has been accepted for testing, listing, and labeling halon type portable fire extinguishers. In addition, § 162.028-5 is changed so that the text no longer conflicts with the standards for listing as an independent laboratory that is contained in Part 159.

Since this rule creates no obligation on anyone and is only informational or editorial, notice and public procedure thereon is unnecessary, and it may be made effective in less than 30 days after publication in Federal Register.

Drafting Information

The principle persons involved in drafting this document are: Mr. Klaus Wahle, Project Manager, Office of Merchant Marine Safety, and Mr. S. M. Colby, Project Counsel, Office of Chief Counsel.

Evaluation

This final rule is considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. The change to 46 CFR Part 162 contained in this final rule only provides information for the public by listing additional independent laboratories that the Coast Guard accepts under the standards contained in § 159.010-7 or is editorial changes to out-of-date text. No obligation or burden is placed on any person, and the amended rule provides manufacturers of portable fire extinguishers a choice of independent laboratories to perform and supervise approval or production inspections or tests for portable fire extinguishers.

Regulatory Flexibility Act Certification

The agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities, because no obligation is created.

OMB Control Numbers

This final rule contains no new requirements in the application procedure for independent laboratories. This procedure has been approved by OMB and assigned control number 2115-0122.

List of Subjects 46 CFR Part 162

Marine safety, Oil pollution.

In consideration of the foregoing, Part 162 of Chapter I, Title 46, Code of Federal Regulations, is amended as follows:

SUBCHAPTER Q—EQUIPMENT, CONSTRUCTION AND MATERIALS SPECIFICATIONS AND APPROVAL

PART 162—ENGINEERING

1. By revising the authority citation to Part 162 to read as follows:

Authority: 46 U.S.C. 3306(a); 49 CFR 1.46(b).

2. By revising § 162.028-5 to read as follows:

§ 162.028-5 Independent laboratories: Listing.

The following have met the standards under § 159.101-7 for listing as an independent laboratory to perform or supervise approval or productions inspections or tests of portable fire extinguishers:

(a) For dry chemical, CO_2, water and foam type portable fire extinguishers:

(1) Underwriters Laboratories, Inc., mailing address: P.O. Box 247, Northbrook, Illinois 60062.

(2) Underwriters' Laboratories of Canada, mailing address: 7 Crouse Rd, Scarborough, Ontario, MIR 3A9, Canada.

(b) For halon type fire extinguishers:

(1) Underwriters Laboratories, Inc., mailing address: P.O. Box 247, Northbrook, Illinois 60062.

(2) Underwriters' Laboratories of Canada, mailing address: 7 Crouse Rd, Scarborough, Ontario, MIR 3A9, Canada.

(3) Factory Mutual Research Corporation, mailing address: 1151 Boston-Providence Turnpike, P.O. Box 688, Norwood, MA 02062.

Dated: February 24, 1984.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 84-5540 Filed 2-29-84; 8:45 am]

BILLING CODE 4910-14-M

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Amdts. 192-47 and 195-30; Docket PS-58]

Transportation of Natural and Other Gas and Hazardous Liquids by Pipeline; Temperature Limits on Steel Pipe That Has Been Cold Expanded To Meet the Specified Minimum Yield Strength

AGENCY: Materials Transportation Bureau (MTB) Research and Special Programs Administration, Transportation.

ACTION: Final rule.

SUMMARY: These amendments increase the temperature limit to which steel pipe that has been cold expanded to meet the specified minimum yield strength (SMYS) may be heated without a reduction in design pressure. The limit now is 600° F and temperatures above 800° F are needed to remove defects called "hard spots." Research shows that a temperature of 900° F can be withstood for up to 1 hour without reducing the yield strength of the pipe and that the limit can be safely increased to permit the removal of hard spots and to eliminate a potential cause of hydrogen stress cracking (HSC).

EFFECTIVE DATE: April 2, 1984.

FOR FURTHER INFORMATION CONTACT: William A. Gloe, 202-426-2082, regarding the content of these amendments, or the Dockets Branch, 202-426-3148, regarding copies of the amendments or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

This final rule is based on a petition by the American Society of Mechanical Engineers (ASME) Gas Piping Standards Committee citing research work performed by the Battelle Memorial Institute of Columbus, Ohio, review by the MTB, and subsequent incorporation of the recommended changes into the "Gas Transmission and Distribution Piping Systems," ANSI/ASME B31.8 Code. The Battelle report, entitled "The Effect of Tempering on the Mechanical Properties of Cold Expanded Line-Pipe Steels," shows that hard spots (undesirable hardened areas on the surface of the pipe) can be removed by heating to temperatures between 800 and 900° F. Mechanical properties are not affected if the time of heating is limited to 1 hour or less. The effect achieved is to reduce the hardness of the hard spot and to eliminate a potential cause of HSC that could result in eventual failure of the pipeline.

Sections 192.105 and 195.106 presently require that if steel pipe that is cold worked to meet the SMYS is heated, other than by welding, to 600° F or more, the design pressure must be limited to 75 percent of that normally calculated. This requirement imposes a penalty in terms of operating pressure that is unacceptable for most pipelines, and in effect, prohibits the heating of steel pipe that has been cold worked, as described, to a temperature higher than 600° F.

The Battelle report discusses the origin of the heating limitation as having been in the ANSI B31.8 Code since it was issued in the mid-1950's and describes selection of the 600 degree limit as follows:

> At that time, the temperature of 600 F was selected by committee discussion and judgement; the decision was not based on performance or operating data. The original thought was that, if the pipe were heated above 600 F, the increase in yield strength of the steel caused by cold work (cold expansion) during the manufacture of the pipe would be lost because of stress relief.

In developing the rule based on the Battelle testing, MTB uses the term "cold expansion" rather than "cold work" both for consistency with the testing actually performed and to clarify applicability.

Notice of Proposed Rulemaking

An NPRM published on September 13, 1979 (44 FR 53185), proposed to increase the temperature limitation in §§ 192.105 and 195.106 from 600° F to 900° F, with the added provision that heating between 600 and 900 degrees may not exceed 1 hour. The NPRM provided the background for the proposal in terms of effects on gas pipelines because the ASME petition addressed only Part 192. Also, according to data available to MTB, pipeline failure due to hard spots and subsequent HSC have only occurred in gas pipeline systems. The NPRM used the ASME petition as a basis for also amending Part 195 because of the similarity of both rules, although the problem of HSC is not known to have occurred in hazardous liquid pipelines.

The NPRM also proposed that an exception from the temperature limitation be added for stress relieving as a part of welding, and that operators have and follow written procedures for thermally removing hard spots within the revised time and temperature limits. The proposed new sections requiring written procedures have been deleted in this final rule for the reason that the industry has adopted the basic proposal, and MTB believes that operators will develop corresponding written procedures without the need for Federal regulation. Because the Battelle study did not include testing of X-70 grade cold expanded steel line pipe (pipe having a minimum yield strength of 70,000 psi), MTB requested that commenters provide any data that may be available to aid in determining whether X-70 grades should be excluded from the more relaxed rule. Responses are discussed in the following Discussion of Comments.

Discussion of Comments

Comments were received from the API, the American Gas Association (AGA), the Interstate Natural Gas Association of America (INGAA), ASME Gas Piping Standards Committee, the New England Gas Association, seven oil and gas pipeline operators, and one commenter from the nuclear industry. With the exception of the comment from UNC Naval Products, a division of the United Nuclear Corporation, all commenters concurred with the proposed rule.

General

Comments in response to the NPRM were generally of the following nature:

> It is recognized in the industry and elsewhere that the removal of hard spots is most beneficial. As such, INGAA concurs with MTB's proposed limit of 900 F to permit the removal of these hard spots * * *.

Other commenters stressed the recognition that regulations can be relaxed, and in so doing increase pipeline safety overall, such as this comment by the AGA:

> We encourage any actions which will provide in a reasonable manner a potential for increased pipeline safety. Certainly the reduced potential for hydrogen-stress cracking presented by this rulemaking would enhance pipeline safety, and [heating] is the only practicable method for removing this potential resulting from hard spots.

The one negative commenter made four observations:

(1) Thermal methods for the removal of hard spots would not be necessary if additional controls were imposed during manufacture;

(2) Hard spots may be caused by alloy segregation rather than localized quenching alone;

(3) Hard spots may occur on pipe that is not cold expanded as well, and

(4) If hard spots are due to austenite transformation as a result of cold work, then the noncold expanded pipe will slowly transform during service.

MTB believes that the fact that hard spots and HSC have occurred in gas transmission lines supports the need for a thermal method of removal, and that further discussion of the nature of hard spot formation and possible prevention in manufacture is beyond the scope of this rulemaking. However, MTB is currently taking action through the appropriate industry committee to assure that additional controls in pipe manufacture will be utilized. Although hard spots may also occur on noncold expanded pipe, there is no temperature limitation in the regulations to prevent their removal by thermal treatment.

UNC Naval Products also argued that the heating limit for 1 hour should not be as high as 900° F for reasons of possible embrittlement, and that an exception for stress relieving as a part of welding should not be made. As explained in the NPRM, MTB recommended the 900° F temperature limit after review of the Battelle test data, and had considered that the range of 100 degrees (from 800 to 900° F) was necessary as a practical working tolerance for thermal removal of hard spots in the field. Subsequent to issuance of the NPRM, both Battelle and the ASME agreed with the 900° F limit and withdrew their previous recommendation of 825° F as a temperature limitation. In their letter comment on the NPRM, the ASME concurred with MTB by stating:

"We feel that the change made to the original petition * * *" * * * "primarily raising the temperature from 825 degrees F to 900 degrees F is in order and appropriate. We also discussed this with the original Battelle researchers and they concur."

MTB does not take issue with the United Nuclear commenter's view as it may be applicable to certain grades of alloy steel and makes no general recommendation to heat alloy steels after quenching in the range of 800 to 900° F. Certain alloy grades whose properties are attained by quenching and tempering are known to be susceptible to a precipitation type embrittlement (temper embrittlement) when heated in this range after quenching or being slow cooled through the range. This rulemaking is limited to consideration of more ductile line pipe steels whose properties may be enhanced by cold work during cold expansion, but that are basically low carbon, carbon-manganese, or microalloyed grades that are not susceptible to temper embrittlement.

The NPRM made an exception for stress relief of welds because §192.239(g) specifies a minimum stress relief temperature of 1,100° F. More importantly, §192.239(b) requires that welds be thermally stress relieved under certain conditions. Stress relieving is normally only required on welds that join thick wall fittings with relatively thinner wall pipe, where the fitting absorbs the heat of welding more quickly than the pipe, cooling the weld too rapidly, and resulting in possible embrittlement of the weld. The same effect occurs in the stress relieving cycle. Although the weld may be heated to 1,100 degrees, the thinner wall pipe dissipates the heat and the heating effect on the pipe is insufficient to cause a reduction in yield strength. This, plus the fact that the typical joint that may be stress relieved offers additional hoop strength by the nature of its design mitigates any possible problem in weakening of the pipe end adjacent to the weld. Section 192.239(a) specifies that stress relieving must be carried out as prescribed by Section VIII of the ASME Boiler and Pressure Vessel Code (1977 edition), and Section VIII requires testing of the effect of stress relieving as a part of welding procedure qualification. With these provisions, and acknowledging that stress relieving would be performed only on rare occasions where there is no other remedy, MTB believes that the exception for stress relief is appropriate.

Request for Data on X-70 Pipe Grade Steels

While recognizing that there are variables in the manufacture of X-70 line pipe that are not comparable with earlier, lower strength pipe grades, MTB chose to include X-70 as well as other grades in this rulemaking. However, MTB requested data to aid in determining whether X-70 pipe steels were properly included or should be specifically excluded from the proposed heating limitation. No actual data was received to indicate that allowing the heating of cold expanded X-70 pipe to 900° F for 1 hour would have any adverse effect. The Tennessee Gas Pipeline Company and the ASME commented that the requested information is unnecessary because the cold expansion of X-70 pipe is not done for the enhancement of yield strength, but rather for the purpose of attaining roundness, straightness, and dimensional tolerance control as required by the pipe specifications. Tennessee also asserted that this was true for a large percentage of X-60 and X-65 pipe and submitted data on X-60 pipe to support its position. If the data is representative of X-70 pipe, the Tennessee Gas Pipeline Company and ASME comments support a conclusion that the heating limitation of §§192.105 and 195.106 would not apply and an exclusion is not necessary for X-70 pipe.

Conversely, the one negative commenter, UNC Naval Products, recommended against including X-70 line pipe steels having somewhat higher alloy contents without specific study. The commenter did not further explain what might be gained by specific study and offered no data to indicate that a safety hazard might be encountered if X-70 line pipe steels were not excluded from the final rule.

The purpose of the temperature limitation of §§192.105 and 192.106 is to assure a factor of safety relative to the possible reduction in yield strength by heating and applies only to steel line pipe that has been cold expanded to meet the SMYS. If the mechanics of attaining the finished pipe yield strength do not depend on cold expansion, the limitations of §§192.105 and 192.106 do not apply. However, in the absence of comprehensive data to show whether or not there is positive plate to pipe shift in yield strength with cold expansion, the only reliable means to determine applicability is to heat the material in question for the time necessary, and to conduct destructive testing as was done in the Battelle study. The complete report for this testing is contained in the docket file for this proceeding for the review of interested persons.

Advisory Committee Review

Section 4(b) of the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1673(b)), requires that each proposed amendment to a safety standard established under that statute be submitted to a 15-member advisory committee for its consideration. The committee, composed of persons knowledgeable about transportation of gas by pipeline, considered the proposed amendments to §§192.105 and 192.713 at a meeting in Washington, D.C., on April 15-17, 1980. In its report dated July 3, 1980 (a copy of which is in the docket), the committee found the proposed amendments, as set forth in a NPRM to be technically feasible, practicable, and reasonable.

Similarly, Section 204(b) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2003(b)) requires that the proposed amendments to §§195.106 and 195.422 be submitted for consideration by a 15-member advisory committee composed of persons knowledgeable

about the transportation of hazardous liquids by pipeline. The committee considered about the proposed amendments, as set forth in the NPRM, at a meeting in Washington, D.C., on December 7–8, 1982. The report of the committee dated March 9, 1983, states that "By a unanimous vote in favor, the 13 Committee members present (1 absent) found the Notice of Proposed Rulemaking as drafted by the MTB staff to be technically feasible, practical, and reasonable." A copy of the committee report is in the docket.

Classification

This final rule is considered to be nonmajor under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). Because the economic impact of this action is minimal, albeit favorable on the economy, further evaluation is unnecessary. The change made is a liberalization of requirements based on actual test data and can have no adverse impact.

Since the impact of this final rule is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects

49 CFR Part 192

Pipeline safety, Pipe design, Design formula for steel pipe.

49 CFR Part 195

Pipeline safety, Ammonia, Petroleum, Internal design pressure.

Based on the foregoing, 49 CFR Parts 192 and 195 are amended as follows:

Part 192—[AMENDED]

1. Section 192.105(b) is revised.

§ 192.105 Design formula for steel pipe.

* * * * *

(b) If steel pipe that has been subjected to cold expansion to meet the SMYS is subsequently heated, other than by welding or stress relieving as a part of welding, the design pressure is limited to 75 percent of the pressure determined under paragraph (a) of this section if the temperature of the pipe exceeds 900° F (482° C) at any time or is held above 600° F (316° C) for more than 1 hour.

(Authority citation for Part 192 is: 49 U.S.C. 1672 and 1804; 49 CFR 1.53, and Appendix A of Part 1)

Part 195—[AMENDED]

2. Section 195.106 is amended by revising the "F" factor to read as follows:

§ 195.106 Internal design pressure.

(a) * * *

F=A design factor of 0.72, except that a design factor of 0.60 is used for pipe, including risers, on a platform located offshore or on a platform in inland navigable waters, and 0.54 is used for pipe that has been subjected to cold expansion to meet the specified minimum yield strength and is subsequently heated, other than by welding or stress relieving as a part of welding, to a temperature higher than 900° F (482° C) for any period of time or over 600° F (316° C) for more than 1 hour.

* * * * *

(Authority citation for Part 195 is: 49 U.S.C. 2002; 49 CFR 1.53, and Appendix A of Part 1)

Issued in Washington, D.C., on February 24, 1984.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 84-5594 Filed 2-29-84; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 37

Geological and Geophysical Exploration of the Coastal Plain, Arctic National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service is revising the guidelines at 50 CFR Part 37 for geological and geophysical exploration of the coastal plain, Arctic National Wildlife Refuge, Alaska (48 FR 16838–16870), by modifying the dates for filing exploration plans for seismic and surface geologic exploratory activities. This modification is necessary to provide the Service additional time to analyze preliminary data collected from exploratory activities conducted during the winter of 1983–84 and to assess the environmental impacts related to these exploratory activities before processing newly proposed exploration plans. This modification will allow the Service to better evaluate newly proposed exploration plans in order to determine their utility for providing data and information about the oil and gas production potential of the coastal plain while avoiding significant adverse impacts on the refuge's fish and wildlife, their habitat and environment. This action has no effect on exploration plans for the coastal plain which have already been approved pursuant to these guidelines.

In addition, minor errors made in the coastal plain's legal description are being corrected.

EFFECTIVE DATE: March 1, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Putz, Regional Director, Region 7, U.S. Fish and Wildlife Service 1011 East Tudor Road, Anchorage, Alaska 99503, telephone number (907) 786–3542.

SUPPLEMENTARY INFORMATION: On April 19, 1983, the Service published at 48 FR 16838–16870 guidelines for geological and geophysical exploration of the coastal plain, Arctic National Wildlife Refuge (ANWR), Alaska (50 CFR Part 37). These guidelines were promulgated as regulations pursuant to subsection 1002(d)(1) of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). They prescribe how to obtain approval to conduct exploratory activities and place limitations on the way in which such activities can be conducted. The purpose of such exploration is to obtain data and information about the oil and gas production potential of the coastal plain, which will be used in preparing a report to Congress. The report will contain, among other things, a recommendation on the desirability of further oil and gas exploration, development and production in the area and an evaluation of the adverse effects of these activities on the refuge's fish and wildlife, their habitats, and other resources.

The guidelines give anyone wishing permission to explore ANWR's coastal plain two opportunities to submit an exploration plan. The first filing date was May 20, 1983. The second filing date is March 1, 1984.

The Service has determined that analysis of preliminary data collected as a result of exploratory activities conducted during the winter of 1983–84 and assessment of the environmental impacts related to those activities will not be complete by March 1, 1984, and that this analysis and assessment will be beneficial in processing any additional exploration plans that are submitted on a second filing date. Therefore, the Service is amending 50 CFR § 37.21(b) to modify the March 1, 1984, date. Section 37.21(b) is being revised to require anyone not already authorized who wishes to conduct seismic exploration of the coastal plain during the period from October 1, 1984, through May 31, 1986, or any portion thereof, to submit an exploration plan

on June 4, 1984. This subsection is also being revised to require anyone not already authorized who wishes to conduct surface geological exploration or any type of geophysical exploration other than seismic exploration during the period from June 1, 1984, through May 31, 1986, or any portions thereof, to file an exploration plan on April 2, 1984. These changes are not intended to affect any exploration plan which has already been approved and is continuing in effect. Nor are they intended to affect the option of anyone whose exploration plan has already been approved to submit a second plan if he chooses to do so. For more information, see the preamble to the final regulations at 48 FR 16844–16845, April 19, 1983.

As March 1, 1984, is fast approaching, it is impossible to issue a notice of proposed rulemaking and afford the public the usual 30-day period for commenting on these revisions. In addition, these amendments are technical in nature and relieve restrictions that would otherwise apply by giving all applicants more time in which to prepare their exploration plans. These amendments also allow exploration plans covering certain kinds of exploration activities that are proposed to be undertaken this summer to be filed again this year. For these reasons, good cause exists to waive the requirements of 5 U.S.C. 553(b) for a notice of proposed rulemaking and an opportunity for public comment. It is necessary to make this rule effective immediately rather than 30 days after publication in order to relieve potential applicants of the requirement to file by March 1, 1984, contained in the previous rule. Accordingly, good cause exists to waive the requirement of 5 U.S.C. 553(c) for a 30-day delay in the rule's effectiveness.

The legal description for the boundaries of ANWR's coastal plain was published as Appendix I to 50 CFR Part 37, 48 FR 16869–16870, on April 19, 1983. That description contained a few minor clerical errors which are being corrected at this time. As these corrections are technical in nature and not intended to change agency operations, good cause exists for waiving the notice and comment procedure of 5 U.S.C. 553(b) and for making these corrections effective upon publication notwithstanding 5 U.S.C. 553(c).

Curtis Wilson, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (telephone number (202) 343–2590) is the primary author of this final rule amendment.

Determination of Effects

The Department has determined that this document is not a major rule under Executive Order 12291 and certified that document would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The Department has determined that the information collection requirements contained in 50 CFR Part 37 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because fewer than 10 respondents are expected to file annually.

NEPA Compliance

Prior to the publication of 50 CFR Part 37 as a final rule, the Service completed and published (in February 1983) an Environmental Impact Statement (EIS) titled: "Proposed Oil and Gas Exploration within the Costal Plain of the Arctic National Wildlife Refuge, Alaska." For more information on this EIS, see 48 FR 16857–16858. In accordance with 516 DM 6 Appendix 1 this minor rule change is categorically excluded from further compliance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), because it has no potential for causing substantial environmental impact.

List of Subjects in 50 CFR Part 37

Alaska, Oil and gas exploration, Wildlife refuges.

PART 37—[AMENDED]

For the reasons set out in the preamble and under the authorities of section 1002 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2449, as amended by section 110 of Pub. L. 97–394, 96 Stat. 1982 (16 U.S.C. 3142); section 110 of Pub. L. 89–665, as added by section 206 of Pub. L. 96–515, 94 Stat. 2998 (16 U.S.C. 470h–2); section 401 of Pub. L. 148, 49 Stat. 383, as amended (16 U.S.C. 715s); 31 U.S.C. 9701; 5 U.S.C. 301; and 209 DM 6.1; 50 CFR Part 37 is amended and corrected as follows:

1. In § 37.21, paragraph (b) is revised to read as follows:

§ 37.21 Application requirements.

* * * * *

(b) Any person wanting to conduct exploratory activities may apply for a special use permit by submitting for approval one or more written exploration plans, in triplicate, to the Regional Director, Region 7, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503. To be considered, exploration plans covering the period from the inception of the program through May 31, 1986, or any portions thereof, must be received by the Regional Director during normal business hours on May 20, 1983; exploration plans covering exploratory activities other than seismic exploration for the period from June 1, 1984, through May 31, 1986, or any portions thereof, must be received by the Regional Director during normal business hours on April 2, 1984; and exploration plans covering, but not limited to, seismic exploration for the period from October 1, 1984, through May 31, 1986, or any portions thereof, must be received by the Regional Director during normal business hours on June 4, 1984.

* * * * *

Appendix I—Legal Description of the Coastal plain, Arctic National Wildlife Refuge, Alaska [Corrected]

2. At 48 FR 16870, April 19, 1983, first column, last paragraph, the first line is corrected to read "Thence westerly, between sections 7 and ".

3. At 48 FR 16870, April 19, 1983, second column, seventh paragraph, the first line is corrected to read "Thence southerly, between sections 1 and 6".

4. At 48 FR 16870, April 19, 1983, second column, thirteenth paragraph, the first line is corrected to read "Thence northerly, between ranges 31 and".

(Sec. 1002, Pub. L. 96–487, 94 Stat. 2449, as amended by sec. 110, Pub. L. 97–394, 96 Stat. 1982 (16 U.S.C. 3142))

Dated: February 15, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–5438 Filed 2–29–84; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 49, No. 42
Thursday, March 1, 1984

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1036

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Proposed Suspension or Termination of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension or termination of rules.

SUMMARY: This notice invites written comments on a proposal to suspend for 1984 or, alternatively, to terminate the seasonal producer payment plan (take-out/pay-back plan) provisions of the Easterm Ohio-Western Pennsylvania milk order. The plan is designed to encourage dairy farmers to produce about the same amount of milk each month of the year.

Suspension of the plan was requested by Milk Marketing, Inc., a cooperative association representing a substantial number of producers supplying the market. The association contends that the plan should be suspended for 1984 because it no longer accomplishes its intended purpose.

Since the basis of the suspension request suggests that under current marketing conditions the plan is no longer effective, it may be more appropriate to terminate it. Accordingly, interested parties are invited to comment on whether the plan should be suspended for 1984 or terminated.

DATE: Comments are due on or before March 16, 1984.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7183.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Market Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on dairy farmers and would not affect milk handlers.

Notice is hereby given that, pursuant to the provisions of the Agriculural Marketing Agreement Act of 1937, as amended (7 U.S.C 601 *et seq.*), the suspension for April through December 1984 or termination of the following provsions of the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is being considered:

1. In § 1036.61, paragraph (f), the words "For the months of January through March and August,"; and all of paragraphs (g) through (l).
2. In § 1036.70, all of paragraph (b).

All persons who want to send written data, views or arguments about the proposed suspension or termination should send two copies of them to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 15th day after publication of this notice in the Federal Register.

The comments that are sent will be made available for public inspection in the Hearing Clerk's office during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed action would make inoperative for 1984 or remove permanently the seasonal producer payment plan (take-out/pay-back plan) provisions of the Eastern Ohio-Western Pennsylvania order. Under these provisions, 6 percent of the Minnesota-Wisconsin price but not more than 25 cents per hundredweight of producer milk is deducted from the pool value of milk in computing the uniform prices to pay producers for their milk during the months of April through July. The monies so accumulated are added to the pool funds in computing the uniform prices to pay producers for their milk deliveries in the following months of September through December. This plan is intended to encourage dairy farmers to produce about the same amount of milk each month of the year.

The proposal to suspend the seasonal payment plan for 1984 was made by Milk Marketing, Inc. (MMI), a cooperative association representing a substantial number of producers supplying the market. In its request, the cooperative claims that the seasonal payment plan no longer accomplishes its intended purpose. In this regard, the cooperative contends that the 25-cent limit on the withholding rate, has held the "take-out" rate constant at 25 cents per hundredweight since the plan was adopted for this market in 1970. Because of this, proponent contends that the 25-cent rate no longer provides an adequate incentive for producers to incur the additional costs of altering their production patterns in a desirable manner whereby they produce about the same amount of milk each month of the year.

It should be noted that the operation of the seasonal payment plan for this market was suspended last year at the request of MMI. The basis of petitioner's request for a suspension of the seasonal payment plan again this year, raises the question whether the plan should be continued. Also, it should be noted that MMI proposed that a similar take-out/pay-back plan be eliminated from the nearby Ohio Valley order. That issue was considered at a public hearing held at Columbus, Ohio, in October 1983. On the basis of that record, the provisions of the take-out/pay-back plan for the Ohio Valley market were recently terminated. If the Eastern Ohio-Western Pennsylvania plan is continued, price alignment problems would develop with the Ohio Valley and other nearby markets in the future. Accordingly, interested parties are invited to comment on whether the plan should be suspended for 1984 or terminated.

List of Subjects in 7 CFR Part 1036

Milk marketing orders, milk, dairy products.

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

Signed at Washington, D.C., on February 24, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-5320 Filed 2-29-84; 8:45 am]
BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

Export and Import of Nuclear Equipment and Material

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations to expand the authority of the public to export nonsensitive nuclear equipment and nuclear material under general license. Several other miscellaneous amendments are also proposed to simplify and clarify the regulations in Part 110. The proposed amendments are the result of internal NRC studies and of public comments received during an earlier rulemaking proceeding concerning the export and import of certain minor quantities of nuclear material. The proposals would not affect the Commission's existing rigorous controls over the export of proliferation-sensitive nuclear commodities.

DATES: Comment period expires April 17, 1984. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given, except as to comments received on or before this date.

ADDRESSES: Written comments should be addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT: Marvin R. Peterson, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 492-4599 or Joanna M. Becker, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 492-7630.

SUPPLEMENTARY INFORMATION: On March 21, 1980, NRC published in the Federal Register (45 FR 18370) a final rule amending Part 110. The amendments simplified licensing requirements for the export of certain minor quantities of nuclear material. In its statement accompanying the final rule, the Commission indicated that certain proposals received from the public for additional revisions to Part 110 would be considered in a speparate rulemaking proceeding, along with a possible revision of the general license for export of americium-241. The proposed amendments which follow address these matters and also include related changes developed by the Commission.

The proposed amendments would provide additional general licenses for non-sensitive exports and imports and would also make other clarifying and simplifying changes to Part 110, both of which would result in a significant reduction in regulatory burdens on the public without raising any proliferation concerns. Although the bulk of the export licensing staff's time would still be spent processing major cases, the proposed new or revised general licenses would reduce by over 50% the total number of applications received. This reduction in the non-sensitive case processing workload would enable increased attention to be paid to proliferation-sensitive nuclear export license applications.

The proposed amendments contain one proposal for more restrictive licensing provisions. Because of the possible proliferation concern regarding the use of large quantities of americium-241 in neutron sources in certain countries, the Executive Branch has recommended and NRC agrees that the current unrestricted americium-241 general license should be limited to exports to certain countries only. Exports to certain other countries would be limited to 1 curie per shipment [see proposed §110.23(c)]. The Commission estimates that, if adopted, this change will result in an increase of less than 6 specific export license applications per year.

The proposed amendments can be divided into four broad categories: (1) New or revised general licenses; (2) elimination of unnecessary paperwork and other regulatory burdens on licensees; (3) simplification clarification of certain sections of Part 110; and (4) corrections and other non-substantive technical amendments. A detailed discussion of each of the proposed amendments follows this introduction. At the outset, however, the Commission would like to highlight the rationale behind the proposed new or revised general licenses.

The proposed general licenses would incorporate for the first time in NRC's regulations the U.S. Government policy of facilitating nuclear cooperation with countries sharing U.S. nonproliferation goals. The Departments of Commerce and Energy have adopted similar general licensing provisions for nuclear-related commodities and technology under their respective export licensing and approval authorities. Under this concept, the general licenses would be divided into essentially two categories. Those in the first category would permit exports to all countries except certain embargoed countries: Cuba, Kampuchea, North Korea, and Vietnam. The Commission and the Executive Branch have reviewed these proposed general licenses and concluded that the material involved is insignificant from the standpoint of possible proliferation concerns, regardless of the country of destination. The proposed general licenses in the second category would apply to a narrower category of countries, i.e., those states, except for Libya, Iraq, and Iran, which are adherents to the Nuclear Non-Proliferation Treaty (NPT), plus France, Spain, and the Peoples Republic of China. While additional commodities could be exported under the general licenses in this category, they are only moderately more significant from a proliferation standpoint than those in the first category. As a further caution, however, the second category of general licenses is limited, where appropriate, in that such general licenses may not be used if the exporter knows, or has reason to believe, that the material will be used in any activities related to isotope separation, chemical reprocessing, heavy water production or the fabrication of nuclear fuel containing plutonium. The proposed component general license would be further limited to only those countries which, in addition to sharing good nonproliferation credentials, have provided the U.S. with generic assurances that they meet the Section 109 criteria of the Atomic Energy Act. For easy reference, a detailed comparison of the proposed new or revised general licenses with the existing general licenses is included at the end of this statement of considerations.

The Commission believes that the proposed approach to general licenses can benefit U.S. nonproliferation objectives by demonstrating to countries abroad the advantages of supporting effective nonproliferation policies. It would also conform to Section 2 of the Nuclear Non-Proliferation Act of 1978 (NNPA) with respect to confirming the reliability of the United States as a supplier of nuclear equipment and material to those countries which adhere to effective nonproliferation policies. At the same time, the Commission remains concerned about the further spread of sensitive nuclear activities (i.e., isotope separation, chemical reprocessing, heavy water production and plutonium fuel fabrication) beyond those advanced nations that are already engaging in those activities. The Commission intends to monitor closely developments

in these areas and, should additional countries make any significant moves that are inconsistent with U.S. law and policy, such as the design or acquisition of facilities or the commencement of research and development programs to acquire such sensitive nuclear facilities, the Commission will promptly initiate steps, after consulting with the Executive Branch, to revoke the eligibility of such countries for favorable general license treatment.

The Commission has concluded that the proposed amendments are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety. The proposed amendments are consistent with the provisions of the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978.

Since the proposed amendments will result in a significant net reduction in specific export licensing requirements, the Commission has not prepared a formal value-impact analysis.

Analysis of Comments

Twenty letters of comments from the public were received in the previous rulemaking proceeding concerning unimportant quantities of nuclear material (45 FR 18370, March 21, 1980). In addition, two letters were received commenting on the Commission's final rulemaking action on May 19, 1978 (43 FR 21641), which revised Part 110 to reflect enactment of the Nuclear Non-Proliferation Act of 1978 (NNPA). Except as addressed in the rulemaking proceeding on unimportant quantities referred to above, the Commission's resolution of these comments is discussed below and reflected in the proposed regulations.

1. Thirteen commentators recommended retention of the americium-241 general license, in one form or another. Various commercial uses were cited as justification for a general license, including use in gas and aerosol detectors, thickness gauges, measuring devices, calibration and reference sources, and neutron sources for use in geological testing instruments and boron concentration measurement systems. As noted above, the Commission and the Executive Branch have concluded that, with limited exceptions, an unacceptable risk to the common defense and security of the U.S. would not result from the continued unrestricted export of americium-241. The proposed revised americium-241 general licenses are contained in § 110.23(b)(2) and § 110.23(c).

2. Eberline Instrument Corporation and the National Bureau of Standards (NBS) requested that a new general license be established for small quantities of special nuclear material (SNM) used in calibration and reference sources.

The proposed amendments which follow would accommodate these requests by providing in new § 110.21(b)(1) a general license for the export of up to 0.001 effective kilogram per shipment of any SNM (for example, 1.0 gram of plutonium, U-233 or U-235, or 10 kilograms of 1.0 percent enriched uranium). This proposed amendment will also make it possible to delete existing § 110.12, since the new limit encompasses the bulk of prospective intergovernmental cooperative exports. NBS had requested a general license for 5 grams of SNM. However, repeat exports of 5 grams of plutonium or high-enriched uranium could quickly add up to strategically significant amounts and, accordingly, the Commission does not propose to add such a general license. For the same reason, the proposed amendments do not reflect General Atomic's request for a general license for 100 grams of SNM for research and development end-uses. General Atomic also requested a change concerning the export of diluted SNM. This request would be accommodated through the deletion of § 110.44(a)(1)(iii) and a new general license for the export of SNM in contaminated material in § 110.21(a)(1). Finally, the proposed amendments would accommodate Westinghouse's request for a general license for the export of small quantities of low-enriched fuel samples.

3. In response to a request by Westinghouse, a new general license is proposed [§ 110.21(b)(2)] for the export of replacements of damaged or defective fuel elements. A related request by Westinghouse for a general license authorizing the export of replacements of damaged equipment is accommodated in the proposed new general license for components in § 110.26.

4. Technical Operations, Inc., and the Boeing Company requested revisions to the source material general licenses for exports of certain fabricated forms of depleted uranium. However, these revisions are no longer necessary in view of legislation which transfers to the Commerce and State Departments authority over exports of depleted uranium in certain fabricated forms (see International Security and Development Cooperation Act of 1980, Section 110, Pub. L. 96-533, 94 Stat. 3138, 22 U.S.C. 2403). As implemented, the Commerce Department regulations covering depleted uranium exports essentially comply with the requests of both Technical Operations, Inc., and the Boeing Company.

5. Westinghouse, the National Bureau of Standards and Isotope Products Company requested general licenses to export byproduct material with an atomic number greater than 83. The proposed new general licenses in § 110.23 repond to these requests.

6. In response to a request by Westinghouse, a new general license to permit the import under general license of source material, byproduct material and special nuclear material is proposed in § 110.27. The general license has been restricted, however, to cover spent nuclear fuel only in quantities under 100 kilograms.

In addition to the comments received on the proposed rule regarding unimportant quantities, which have been resolved as indicated above, the Commission received comments from Westinghouse and Dresser Industries on Part 110 as revised on May 19, 1978.

Dresser's comments focused entirely on the Commission's decision to assume export licensing responsibility over nuclear components not on the Nuclear Suppliers Group Trigger List. Dresser maintains that these components are not significant from a proliferation standpoint, and should not be subject to NRC's export licensing authority.

The Commission agrees with Dresser's comments and has clarified that NRC will issue export licenses only for nuclear reactor components on the "Trigger List." The Commerce Department has agreed to this clarification and has assumed export licensing authority over all so-called "balance-of-plant" nuclear reactor components under the Department's commodity control list number 4363B(d).

Westinghouse submitted other comments by letter of July 27, 1978. The comments and the Commission's responses are as follows:

1. Retransfer approval from DOE should not be required for retransfers approved in the context of the Commission and the Executive Branch review of an export license application.

The Commission agrees and has proposed that § 110.6 be revised accordingly.

2. Section 110.30(d), concerning consolidated license applications, should be revised to eliminate the two-year time period limitation and to clarify the restriction to "reasonably similar circumstances."

The Commission agrees and proposes the deletion of the two-year period limitation and the reference to "reasonably similar circumstances." These provisions, which stem from

section 126a.(2) of the Atomic Energy Act, apply only to single Commission findings involving multiple export license applications.

3. Section 110.35(b), which requires applicants to submit amendments to their applications whenever substantive changes in the information in the application occur, should be clarified.

The Commission proposes the deletion of this paragraph since it is unnecessary. The Commission would not issue a license which included authority that the applicant had not requested (i.e., either in the original application or in an amendment to the application). If the circumstances surrounding particular exports change substantially, the Commission has authority to amend the license unilaterally.

4. Section 110.41(b) should indicate that the Executive Branch will be requested to address "material changed circumstances" in preparing its licensing judgments.

The Commission considers it unnecessary to specify the content of Executive Branch judgments in NRC regulations, because this matter is adequately covered by the interagency review procedures published in the Federal Register on June 9, 1978 (45 FR 25326). In addition, the Commission and the Executive Branch have agreed on a format for Executive Branch judgments which incorporates the "no material changed circumstance" standard.

5. The Executive Branch should be requested to provide its judgment on applications within 60 days of receipt. When the Executive Branch exceeds the 60-day time period, the Commission should notify the license applicant.

The Commission does not agree with these suggestions. The time period for Executive Branch review is adequately specified in the June 9, 1978 interagency procedures. Also, the Atomic Energy Act does not require NRC to notify applicants of Executive Branch delays. The Executive Branch, however, is required to notify Congress when its review time exceeds 60 days. In any event, the Commission's staff is in close communication with applicants and is normally able to keep them informed regarding the status of Executive Branch and Commission reviews. Applicants can also approach the Executive Branch agencies directly for additional information.

6. The dollar limit for export of nuclear equipment not requiring Executive Branch review in § 110.41(d)(8) should be raised from $10,000 to $1,000,000.

The Executive Branch has agreed to the revision of § 110.41 to remove the dollar limitation entirely with respect to equipment exports and, instead, to require Executive Branch review for initial exports to foreign reactors and for all exports to certain designated countries [see proposed new § 110.41 (a)(6) and (a)(7)].

7. The requirement in § 110.43(a)(1) for physical security visits to foreign countries receiving Category I nuclear material exports should be made discretionary.

The Commission does not agree. Physical security arrangements are a matter of bilateral concern between the U.S. and the foreign country involved. With respect to Category I exports, foreign visits, which may or may not involve NRC participation, are key elements in assuring that U.S.-supplied material will be adequately protected abroad.

8. In § 110.43, the provision for "countrywide" physical security findings should be made equally applicable to all categories of nuclear material exports.

The Commission agrees with this comment and is proposing that § 110.43(a)(3) be redesignated as § 110.43(d), so that it will apply to exports of all categories of nuclear material.

9. In § 110.44 (a)(1) and (a)(2) the phrases "other information available to the Federal Government" and "material changed circumstances" involve vague concepts which should be clarified.

The Commission does not agree that the above phrases need further clarification in NRC's regulations. NRC's regulations conform to the requirements set forth in section 126a.(2) of the Atomic Energy Act. As Westinghouse itself points out, there is ample legislative history bearing on the meaning of these phrases upon which the Commission can draw. Thus, it is unnecessary to go beyond the statutory language to propose definitions of these terms.

10. Paragraph 110.44(b) should be revised to indicate that the standard for timely Commission review is 120 days after receipt of Executive Branch views.

The Commission does not agree with this comment. While the Commission processes the great majority of applications within 120 days, the Atomic Energy Act, as amended by the NNPA, recognizes that situations may arise (e.g., intervention requests and the need for additional information) which could properly cause a "timely" Commission review to extend beyond 120 days [Section 126(2)]. In these circumstances § 110.40(c) specifies that applicants shall be provided with initial and followup reports, as appropriate, informing them of the reasons for extended licensing reviews. In view of the express statutory provision on this point, it would be inappropriate to establish an arbitrary 120-day standard for completing the Commission's review of such cases.

11. Section 110.45(c) should be amended to specify that the Commission "shall" issue licenses upon a determination that all applicable statutory provisions have been met.

The Commission agrees with this proposal.

12. General licenses should be added for:

a. Exports to Canada;

b. Replacement of certain commodities;

c. Temporary exports (e.g., exhibitions); and

d. Unimportant commodities.

The Commission agrees that additional general licenses should be added. Accordingly, a new general license for replacement fuel elements is proposed at § 110.21(b)(2). The proposed new general license for component exports in § 110.26 can also be used for replacement part exports. As discussed in greater detail below, several additional changes are proposed in the general licenses for the export of unimportant quantities of material, particularly to Non-Proliferation Treaty (NPT) adherents. The Commission does not agree with Westinghouse's suggestion that a special general license for Canada be established. However, the proposed new and revised general licenses would provide for significantly expanded general licenses for export to Canada, particularly the proposed new general licenses for component exports in § 110.26. Finally, the Commission has concluded that temporary exports can be processed using standard export license procedures. Therefore, a new general license for such activities is not warranted.

Analysis of Additional Proposed Amendments Developed by the Commission

In addition to the preceding proposed amendments, which have been proposed in response to specific requests from the public, the Commission is proposing the adoption of additional amendments as follows:

1. Sections 110.1 through 110.5 and 110.10 would be revised and simplified.

2. In § 110.2 editorial changes are proposed, definitions are proposed for "NPT" and "IAEA", and a revised defintion of "nuclear grade graphite" is proposed. The graphite definition would be revised to conform with international guidelines.

3. Section 110.6 would be revised to (1) cover produced SNM and (2) eliminate the requirement for approvals in cases where the retransfer has been approved in the context of a previously issued NRC export license. This latter change was also requested by Westinghouse in its comments on Part 110.

4. Existing §§ 110.11 and 110.12 would be deleted because they would be replaced or encompassed by the proposed new general licenses in § 110.27 and § 110.21(b)(1), respectively. A new § 110.11 would be added to exempt DOE contractors from facility import license requirements.

5. A new general license to export low-enriched uranium in contaminated items or substances is proposed at § 110.21(a)(1).

6. The general license for thorium exports in existing §110.23(a)(2) [proposed §110.22(a)(2)] would be revised to conform with revisions in the COCOM embargo list.

7. Revised byproduct material general licenses are proposed at §110.23. They would provide expanded general licenses to export tritium and other byproduct material with an atomic number greater than 83 (e.g., californium-252, neptunium-237, and polonium-210).

8. Revised general licenses for export of deuterium which would increase the amount authorized for export are proposed at §110.24.

9. Revised general licenses for the export of nuclear grade graphite to cover exports of fabricated nonnuclear-related commercial products (e.g., electrodes, golf clubs, fishing rods, etc.) are proposed at §110.25.

10. The limit in the existing §110.23(a)(1) general license, for the export of bulk source material, would be increased in proposed §110.22(b) from 1 kilogram to 10 kilograms. This increase would conform with revisions in the COCOM embargo list and is consistent with the export control guidelines in IAEA INFCIRC/254, "Guidelines for Nuclear Transfers" (Supplier Guidelines).

11. A new general license for the export of reactor components is proposed at §110.26. This general license would permit the export of nuclear reactor components to light water or heavy water moderated research or power reactors in designated countries which have acceptable non-proliferation credentials and which have provided the U.S. with generic assurances that they meet the Section 109 criteria of the Atomic Energy Act. Except for France, NPT adherence or acceptance of full-scope IAEA safeguards would be a necessary condition for placing a particular country on the authorized list.

12. Section 110.30 would be revised and expanded in scope to encompass the provisions of existing §§110.30, 110.35 and 110.36 [except that the requirement in §110.36(b) would be deleted as unnecessary].

13. Section 110.31 would be revised to incorporate, in simplified form, the provisions of existing §§110.31 through 110.34.

14. Sections 110.40 and 110.41 would be revised for clarification and to expand the categories of cases not requiring Executive Branch review.

15. In §110.42, editorial changes would be made and certain provisions from existing §110.44 would be added so that this section would contain a comprehensive listing of all the applicable export licensing criteria for NRC-licensed equipment and material. The changes would also specify that health and safety findings (pertaining to health and safety in the U.S.) are required only for issuance of licenses to export production or utilization facilities.

16. In §110.44, editorial changes would be made to accommodate the transfer of certain provisions to §110.42. Changes would also be made to reflect the fact that byproduct material export license applications, for which the Commission cannot make the requisite statutory findings after receipt of favorable Executive Branch judgments, will not be referred to the President for action since applicable statutes do not contemplate such referral. Such applications would be denied by the Commission.

17. Section 110.45 would be revised to specify that its provisions do not apply to byproduct material exports.

18. In §110.50, paragraph (b)(3) would be deleted as unnecessary.

19. Section 110.51 would be revised to specify that license amendments are not required for certain changes in intermediate consignees.

20. In §110.70, the categories of license applications noticed in the Federal Register would be revised to eliminate noticing requirements for imports and for low-enriched uranium export applications and applications for export of less than five effective kilograms of plutonium, high-enriched uranium or uranium-233.

21. Editorial changes would be made in §§110.83 and 110.84.

22. Section 110.89 would be revised to clarify certain filing and service requirements.

23. The Commission is proposing the deletion of paragraphs (b) and (c) of §110.91, which concern public dissemination of Commission and Executive Branch views regarding hearing requests and intervention petitions. These paragraphs are redundant because their provisions are adequately covered in §110.72. The Commission intends to adhere to its practice of making unclassified staff and Executive Branch views promptly available to the public.

27. Section 110.103(a) would be revised to eliminate the requirements for binding hearing documents on the left side.

25. The contents of Appendix A would be incorporated into new §§110.7 and 110.8.

26. Appendix C would be redesignated as Appendix A and footnote C to the appendix revised to conform to IAEA INFCIRC/225-Rev. 1.

Paperwork Reduction Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The new export licensing requirements for americium-241, which would be imposed by the proposed amendments, would affect less than 10 licensees and result in an increase of less than 6 new export license applications per year. The remaining amendments reduce the regulatory burden on licensees by reducing the number of specific license applications required.

List of Subjects in 10 CFR Part 110

Administrative practice and procedures, Classified information, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Scientific equipment.

Comparison of Existing Regulations With Proposed Changes

I. Proposed General License Revisions

Proposed [1]	Existing
A. Special Nuclear Material: 1. Low-enriched uranium as residual contamination (§ 110.21(a)(1)).	None

Proposed [1]	Existing
2. One effective gram or less of SNM to countries not listed in §§ 110.28 or 110.29 (110.21(b)(2)).	None.
3. Replacement fuel elements to countries not listed in §§ 110.28 or 110.29 (110.21(b)(2)).	None.
B. Source Material:	
1. Thorium in alloys in concentrations of 5% or less to countries not listed in §§ 110.28 or 110.29 (§ 110.22(a)(3)).	Thorium in aircraft parts only (§ 110.23(b)(2)).
2. Source material in individual shipments of 10 kilograms or less to countries not listed in §§ 110.28 or 110.29 (§ 110.22(b)).	Individual shipments of 1 kilogram or less (§ 110.23(a)(1)).
C. Byproduct Material:	
1. Byproduct material with an atomic number greater than 83, except polonium-210, americium-241 and neptunium-237 (§ 110.23(a)(1)).	Americium-241 only (110.24(d)).
2 Tritium in light sources up to 10,000 curies per shipment (§ 110.23(a)(2)).	100 curies per shipment limitation (except in aircraft safety devices) § 110.24(b) and (c)).
3. Tritium in any dispersed form in shipments of 100 curies or less (§ 110.23(a)(3)).	Same, but limited to certain dispersed forms only (§ 110.24(c)).
4. Polonium-210 in shipments of 1 curies or less (§ 110.23(a)(4)).	Shipments of 100 or less, but only in certain forms (§ 110.24(c)).
5. Neptunium-237 up to 1 kilogram per country per year (§ 110.23(a)(5)).	None
6. Tritium in any form in shipments of 100 curies or less to countries not listed in §.110.28 or 110.29 (§ 110.23(b)).	None.
D. Deuterium:	
1. Deuterium in shipments of 1 kilogram or less (§ 110.24(a)).	90 grams of heavy water (18 grams of deuterium) or less per shipment (§ 110.25).
2. Deuterium in shipments of 10 kilograms or less to countries not listed in §§ 110.28 or 110.29 (§ 110.24(b)).	None.
E. Nuclear grade graphite in shipments of up to 100 kilograms or in fabricated non-nuclear related commercial products (§ 110.25).	Shipments of up to 100 kilograms only (§ 110.26).
F. Nuclear reactor components to certain countries (§ 110.26).	None.
G. Imports	Currently authorized under exemption, except no authority for SNM imports (§ 110.11).

[1] Paragraph designations are from the proposed revision to Part 110 for the proposed general licenses, and from the current Part 110 for the existing general licenses.

II. Significant Proposed Changes to Part 110 (Other Than General Licenses)

A. §110.6	Elimination of requirements for prior approval of retransfers when such retransfers have been approved in the context of issuing the original export license.
B. §110.30(d)	Elimination of provision limiting consolidated license applications to two year duration.
C. §110.41	Expansion of authority for NRC to process minor applications without referral to the Executive Branch (i.e., emphasis would be placed on reviewing exports for sensitive end-uses or initial exports to new facilities).
D. §110.42	Clarification that health and safety findings are not required with respect to the impact abroad of reactor exports.
E. § 110.50	Elimination of requirement to return expired licenses to NRC.
F. § 110.51	Elimination of requirement to obtain license amendments for (1) changes in value (but not quantity) of nuclear equipment; (2) changes in addresses of consignees; and (3) addition of new intermediate consignees for equipment licenses.
G. § 110.70	Elimination of requirement to notice receipt in the Federal Register of applications for imports and for export of LEU and less than 5 kgs. of HEU, U-233 or plutonium.

For the reasons set out in the preamble, Part 110 of chapter 1 of Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

1. The authority citation for Part 110 reads as follows:

Authority: Secs. 51, 53, 54, 57, 62, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161 b. and i., 181, 182, 183, 187, 189, Pub. L. 83–703, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956; Pub. L. 88–489, 78 Stat. 603, 604, 605; Pub. L. 91–560, 84 Stat. 1472; 70 Stat. 1071; Pub. L. 85–256, 71 Stat. 579; Pub. L. 87–615, 76 Stat. 409; Pub. L. 93–377, 88 Stat. 475; Pub. L. 95–242, 92 Stat. 125, 126, 131–139, 141 [42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201 (b) and (i), 2231–2233, 2237, 2239]; Sec. 201, Pub. L. 93–438, 88 Stat. 1242; Pub. L. 94–79, 89 Stat. 413, 414, (42 U.S.C. 5841).

Sec. 110.1(b)(2) also issued under Pub. L. 96–533, 94 Stat. 3138 (22 U.S.C. 2403).

Sec. 110.21 issued under secs. 2, 3, Pub. L. 93–277, 88 Stat. 473, 475, [42 U.S.C. 2074(c), 2077(d)].

Sec. 110.50(b)(4) also issued under Sec. 184, Pub. L. 83–703, 68 Stat. 954; Pub. L. 88–489, 78 Stat. 607 (42 U.S.C. 2234).

Sec. 110.52 also issued under Sec. 186, Pub. L. 83–703, 68 Stat. 955 (42 U.S.C. 2236).

Secs. 110.80–110.113 also issued under 5 U.S.C. 552, 554.

Secs. 110.130–110.135 also issued under 5 U.S.C. 553.

For the purposes of Sec. 223, Pub. L. 83–703, 68 Stat. 958; Pub. L. 90–190, 81 Stat. 578; Pub. L. 91–161, 83 Stat. 445 (42 U.S.C. 2273), 110.50, 110.20–110.29 and 110.20–110.129 also issued under Sec. 161i., Pub. L. 83–703, 68 Stat. 948; Pub. L. 93–377, 88 Stat. 475 [42 U.S.C. 2201(i)] and 110.53 also issued under Sec. 161o, Pub. L. 83–703, 68 Stat. 950; Pub. L. 85–507, 72 Stat. 337 [42 U.S.C. 2201(o)].

2. The table of contents of Subparts A through E of Part 110 is revised to read as follows:

PART 110—EXPORT AND IMPORT OF NUCLEAR FACILITIES AND MATERIAL

Subpart A—General Provisions

Sec.
110.1 Purpose and scope.
110.2 Definitions.
110.3 Interpretations.
110.4 Inquiries.
110.5 License requirements.
110.6 Retransfers.
110.7 List of nuclear equipment and material under NRC export licensing authority.
110.8 List of nuclear equipment and material under NRC import licensing authority.

Subpart B—Exemptions

110.10 General.
110.11 Import of nuclear facilities by Department of Energy contractors.

Subpart C—General Licenses

110.20 General.
110.21 Export of special nuclear material.
110.22 Export of source material.
110.23 Export of byproduct material.
110.24 Export of deuterium.
110.25 Export of nuclear grade graphite.
110.26 Export of nuclear reactor components.
110.27 Imports.
110.28 Embargoed destinations.
110.29 Restricted destinations.

Subpart D—Applications for Specific Licenses

110.30 Filing license applications.
110.31 Information required in license applications.

Subpart E—Review of License Applications

110.40 Commission review.
110.41 Executive Branch review.
110.42 Export license criteria.
110.43 Physical security standards.
110.44 Issuance or denial of licenses.
110.45 Conduct resulting in termination of nuclear exports.

* * * * *

3. Section 110.1 is revised to read as follows:

§ 110.1 Purpose and scope.

(a) The regulations in this part prescribe licensing, enforcement, and rulemaking procedures and criteria, under the Atomic Energy Act for the export of nuclear equipment and material as set out in § 110.7, and the import of nuclear equipment and material, as set out in § 110.8.

(b) The regulations in this part apply to all persons in the United States except: (1) The Departments of Defense and Energy for activities authorized by sections 54, 65, 82, and 91 of the Atomic Energy Act, except when the Department of Energy seeks an export license under section 111 of the Atomic Energy Act; (2) persons who export uranium depleted in the isotope 235 and incorporated in defense articles or commodities solely to take advantage of high density or pyrophoric characteristics, as authorized by Section 110 of the International Security and

Development Cooperation Act of 1980; [1] and (3) persons who import deuterium, nuclear grade graphite or nuclear equipment other than production or utilization facilities.

4. Section 110.2 is amended by (1) removing the paragraph designations of the definitions; (2) removing the definitions of "Agreement State," "Depleted uranium," "Energy Reorganization Act"; "Government agency," "Nuclear equipment," and "Nuclear material;" (3) revising the definitions of "Classified information," "General license" and "Nuclear grade graphite;" and (4) adding, in appropriate alphabetical order, definitions for "IAEA" and "NPT." The added and revised definitions read as follows:

§ 110.2 Definitions.

* * * * *

"Classified information" means National Security Information classified under Executive Order 12356.

* * * * *

"General license" means an export or import license effective without the filing of a specific application with the Commission or the issuance of licensing documents to a particular person.

* * * * *

"IAEA" means the International Atomic Energy Agency.

* * * * *

"NPT" means the Treaty on the Non-Proliferation of Nuclear Weapons (TIAS 6839).

* * * * *

"Nuclear grade graphite" means graphite with a boron equivalent content of less than 5 parts per million and density greater than 1.5 grams per cubic centimeter.

* * * * *

5. Section 110.4 is revised to read as follows:

§ 110.4 Inquiries.

Inquiries concerning this part should be addressed to the Office of the Assistant Director for Export/Import and International Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 [telephone (301) 492–4599 or 492–7984].

6. Section 110.5 is revised to read as follows:

§ 110.5 License requirements.

Except as provided under Subpart B, no person may export any nuclear equipment or material listed in § 110.7, or import any nuclear equipment or material listed in § 110.8, other than as authorized by a general or specific license issued under this part.

7. Section 110.6 is revised to read as follows:

§ 110.6 Retransfers.

(a) Retransfer of any nuclear equipment or material listed in § 110.7, including special nuclear material produced through the use of U.S.-origin source material or special nuclear material, requires authorization by the Department of Energy, unless the export to the new destination is authorized under a specific or general license or an exemption from licensing requirements. Under certain agreements for cooperation, Department of Energy authorization is also required for the retransfer of special nuclear material produced through the use of non-U.S.-supplied nuclear material in U.S.-supplied utilization facilities.

(b) Request for authority to retransfer are processed by the Department of Energy, Office of International Nuclear and Non-Proliferation Policy, Washington, D.C. 20585.

8. A new § 110.7 is added to read as follows:

§ 110.7 List of nuclear equipment and material under NRC export licensing authority.

(a) Nuclear reactors and parts and components for nuclear reactors as follows:

(1) Reactor pressure vessels, i.e., metal vessels, as complete units or major shop-fabricated parts, specially designed or prepared to contain the core of a nuclear reactor and capable of withstanding the operating pressure of the primary coolant.

(2) On-line (e.g., CANDU) reactor fuel charging and discharging machines, i.e., manipulative equipment specially designed or prepared for inserting or removing fuel in an operating nuclear reactor.

(3) Reactor control rods, i.e., rods specially designed or prepared for the control of the reaction rate in a nuclear reactor.

(4) Reactor pressure tubes, i.e., tubes specially designed or prepared to contain fuel elements and the primary coolant in a nuclear reactor at an operating pressure in excess of 50 atmospheres.

(5) Reactor primary coolant pumps, i.e., pumps specially designed or prepared for circulating the primary coolant in a nuclear reactor.

(6) Zirconium tubes, i.e., zirconium metal and alloys in the form of tubes or assemblies of tubes specially designed or prepared for use in a nuclear reactor.

(7) Reactor internals, e.g., core support structures, control rod guide tubes, thermal shields, baffles, core grid plates and diffuser plates specially designed or prepared for use in a nuclear reactor.

(8) Reactor control rod drive mechanisms, including detection and measuring equipment to determine flux levels.

(9) Any other components specially designed or prepared for use in a nuclear reactor or in any of the components described in this paragraph.

(b) Plants for the separation of the isotopes of source material, special nuclear material or lithium, and components for those plants as follows:

(1) Uranium hexafluoride (UF_6) corrosion resistant valves.

(2) Units capable of separating isotopes of source material, special nuclear material or lithium, such as (i) gas centrifuges, (ii) jet nozzle separation units, (iii) vortex separation units, and (iv) laser isotope separation units.

(3) Uranium hexafluoride (UF_6)corrosion resistant axial or centrifugal compressors and specially designed or prepared seals for those compressors.

(4) Gaseous diffusion barriers specially designed or prepared for use in separating isotopes of source material, special nuclear material or lithium.

(5) Gaseous diffuser housings specially designed or prepared for use in plants for separating isotopes of source material, special nuclear material or lithium.

(6) Heat exchangers specially designed or prepared for use in gaseous diffusion plants.

(7) Any other components specially designed or prepared for use in an isotope separation plant or in any of the components described in this paragraph.

(c) Plants for the reprocessing of irradiated nuclear reactor fuel elements and components for those plants as follows:

(1) Fuel element chopping machines, i.e., remotely operated equipment specially designed or prepared to cut, chop or shear irradiated nuclear reactor fuel assemblies, bundles, or rods.

(2) Criticality safe tanks, i.e., small diameter, annular or slab tanks specially designed or prepared for the dissolution of irradiated nuclear reactor fuel.

(3) Countercurrent solvent extractors specially designed or prepared for use in a reprocessing plant.

[1] These exports are subject to the controls of the State Department and the Commerce Department under the general authority of the Arms Export Control Act and the Export Administration Act. The Commerce Department also has export licensing authority over additional nuclear-related commodities, such as advanced computers, bulk zirconium and beryllium.

(4) Process control instrumentation specially designed or prepared for monitoring or controlling the processing of material in a reprocessing plant.

(5) Any other components specially designed or prepared for use in a reprocessing plant or in any of the components described in this paragraph.

(d) Plants for the fabrication of nuclear reactor fuel elements and specially designed or prepared parts and components for those plants.

(e) Plants for the production of heavy water, deuterium and deuterium compounds, specially designed or prepared parts and components for those plants.

(f) Special nuclear material.

(g) Source material.

(h) Byproduct material.

(i) Deuterium.

(j) Nuclear grade graphite.

9. A new § 110.8 is added to read as follows:

§ 110.8 List of nuclear equipment and material under NRC import licensing authority

(a) Production and utilization facilities.

(b) Special nuclear material.

(c) Source material.

(d) Byproduct material.

10. Subpart B is revised to read as follows:

Subpart B—Exemptions

§ 110.10 General.

(a) In response to a request or on its own initiative, the Commission may grant an exemption from the regulations in this part, if it determines that the exemption is authorized by law, is not inimical to the common defense and security, and does not constitute an unreasonable risk to the public health and safety.

(b) An exemption from statutory licensing requirements, as authorized by sections 57d, 62, and 81 of the Atomic Energy Act, will be granted only after coordination with the Executive Branch and after completion of rulemaking proceedings under Subpart L.

(c) The granting of an exemption does not relieve any person from complying with the regulations of other Government agencies applicable to exports or imports under their authority.

§ 110.11 Import of nuclear facilities by Department of Energy contractors.

Department of Energy contractors are exempt from the requirement for production or utilization facility import licenses if such facilities are imported for use in a Department of Energy activity not licensed by the Commission.

11. Subpart C is revised to read as follows:

Subpart C—General Licenses

§ 110.20 General.

(a) In response to a petition or on its own initiative, the Commission may issue a general license for export or import, if it determines that any exports or imports made under the general license will not be inimical to the common defense and security or constitute an unreasonable risk to the public health and safety and otherwise meet applicable statutory requirements.

(b) A general license is issued only after coordination with the Executive Branch and after completion of rulemaking proceedings under Subpart L.

(c) A general license does not relieve any person from complying with the regulations of other Government agencies applicable to exports or imports under their authority.

§ 110.21 Export of special nuclear material.

(1) A general license is issued to any person to export the following to any country not listed in § 110.28:

(1) Low-enriched uranium as residual contamination (17.5 parts per million or less) in any item or substance.

(2) Plutonium containing 80 percent or more by weight of plutonium-238 in cardiac pacemakers.

(3) Special nuclear material in sensing components in instruments, if no more than 3 grams of enriched uranium or 0.1 gram of plutonium or U-233 are contained in each instrument.

(b) A general license is issued to any person to export the following to any country not listed in §§ 110.28 or 110.29, unless the person knows, or has reason to believe, that the material will be used in any activity related to isotope separation, chemical reprocessing, heavy water production or the fabrication of nuclear fuel containing plutonium:

(1) Individual shipment of 0.001 effective kilograms or less (e.g., 1.0 gram of plutonium, U-233 or U-235, or 10 kilograms of 1 percent enriched uranium). No person may export more than 0.1 effective kilogram per year to any one country.

(2) Fuel elements as replacements for damaged or defective unirradiated fuel elements previously exported under a specific license issued after March 10, 1978, subject to the same terms as the orginal export license and the condition that the damaged or defective fuel elements must be returned to the United States within a reasonable time period.

§ 110.22 Export of source material.

(a) A general license is issued to any person to export the following to any country not listed in § 110.28:

(1) Uranium or thorium in any substance in concentrations of less than 0.05 percent by weight.

(2) Thorium in incandescent gas mantles, or in alloys in concentrations of 5 percent or less.

(b) A general license is issued to any person to export uranium or thorium, in individual shipments of 10 kilograms or less, to any country not listed in §§ 110.28 or 110.29, except that—

(1) No person may export more than 1,000 kilograms per year to any one country; and

(2) These exports may not be made if the person knows, or has reason to believe, that the material will be used in any activity related to isotope separation, chemical reprocessing, heavy water production or the fabrication of nuclear fuel containing plutonium.

(c) A general license is issued to any person to export uranium or thorium in individual shipments of 1 kilogram or less to any country listed in § 110.29. No person may export more than 100 kilograms per year to any one country.

§ 110.23 Export of byproduct material.

(a) A general license is issued to any person to export the following to any country not listed in § 110.28.

(1) Any byproduct material except tritium, polonium-210, neptunium-237, and americium-241.

(2) Tritium in luminescent light sources in individual shipments of 10,000 curies or less.

(3) Tritium in any dispersed form (not to include bulk gaseous tritium) in individual shipments 100 curies or less. No person may export more than 1,000 curies per year to any one country.

(4) Polonium-210 in individual shipments of 1 curie of less. No person may export more than 5 curies per quarter or 20 curies per year to any one country.

(5) Neptunium-237. No person may export more than 1 kilogram per year to any one country.

(b) A general license is issued to any person to export the following to any country not listed in §§ 110.28 or 110.29:

(1) Tritium in bulk, undispersed form, in individual shipments of 100 curies or less. No person may export more than 10,000 curies per year to any one country.

(2) Americium-241

(c) A general license is issued to any person to export americium-241 in individual shipments of 1 curie or less to

any country listed in § 110.29. No person may export more than 100 curies per year to any one country.

§ 110.24 Export of deuterium.

(a) A general license is issued to any person to export deuterium in individual shipments of 10 kilograms or less (50 kilograms of heavy water) to any country not listed in §§ 110.28 or 110.29. No person may export more than 200 kilograms (1000 kilograms of heavy water) per year to any one country.

(b) A general license is issued to any person to export deuterium in individual shipments of 1 kilogram or less (5 kilograms of heavy water) to any country listed in § 110.29. No person may export more than 5 kilograms (25 kilograms of heavy water) per year to any one country.

§ 110.25 Export of nuclear grade graphite.

(a) A general license is issued to any person to export nuclear grade graphite in fabricated nonnuclear-related commercial products to any country not listed in §§ 110.29 or 110.29.

(b) A general license is issued to any person to export nuclear grade graphite in fabricated nonnuclear-related commercial products, except for graphite electrodes weighing more than 1 kilogram per electrode, to any country listed in § 110.29. Fabricated products include graphite products in final manufactured form except for detailed machining and other final steps necessary for intended custom end use of the product.

(c) A general license is issued to any person to export bulk nuclear grade graphite in individual shipments of 100 kilograms or less to any country not listed in § 110.28. No person may export more than 2,000 kilograms per year to any one country.

§ 110.26 Export of nuclear reactor components.

(a) A general license is issued to any person to export any nuclear reactor component, listed in § 110.7(a)(6) through (a)(9), for use in any light or heavy water-moderated power or research reactor in any of the following countries:

Canada	Philippines
EURATOM [2]	Spain
Indonesia	Sweden
Japan	Switzerland
South Korea	Taiwan

(b) This general license does not authorize the export of essentially complete reactors through piecemeal exports of facility components. When individual exports of components would amount in the aggregate to export of an essentially complete nuclear reactor, a facility export license is required. Exporters using this general license must submit by February 1 of each year a report of all components shipped during the previous calendar year. This report must include (1) a description of the components keyed to the categories listed in § 110.7(a), (2) shipment dates, (3) recipient countries, and (4) end users.

[2] Belgium, Denmark, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, the United Kingdom and West Germany.

§ 110.27 Imports.

(a) A general license is issued to any person to import byproduct, source or special nuclear material, other than 100 kilograms or more of irradiated fuel, if the consignee is authorized to possess the material under (1) a contract with the Department of Energy or (2) an exemption from the licensing requirements of a general or specific license issued by the Commission or a State with which the Commission has entered into an agreement under section 274b. of the Atomic Energy Act.

(b) Persons generally licensed under paragraph (a) of this section shall provide advance notification of imports of special nuclear material to the Commission as specified in § 73.27 of this chapter.

§ 110.28 Embargoed destinations.

Cuba, Kampuchea, North Korea, Vietnam.

§ 110.29 Restricted destinations.

Albania	Iran	Saudi Arabia
Algeria	Iraq	Seychelles
Andorra	Israel	Solomon Islands
Angola	Kiribati	South Africa
Argentina	Kuwait	St. Kitts
Bahrain	Libya	St. Vincent and the Grenadines
Bhutan	Malawi	Tanzania
Brazil	Mauritania	Uganda
Burma	Mozambique	United Arab Emirates
Chile	Nauru	Yemen Arab Republic
Comoros	Niger	Zambia
Dominica	Oman	
Djibouti	Pakistan	
Equatorial Guinea	Papua New Guinea	
Guyana	Qatar	
India	Sao Tome and Principe	

12. Subpart D is revised to read as follows:

Subpart D—Applications for Specific Licenses

§ 110.30 Filing license applications.

(a) A person shall file a license application with the Assistant Director for Export/Import and International Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or deliver the application in person to the Commission's offices at 1717 H Street, N.W., Washington, D.C.

(b) Except for production or utilization facilities, an export license application should be filed on Form NRC 7. An import license application and a production or utilization facility export license application should be filed by letter. Upon request, applications may be filed by telegram.

(c) Each person shall provide in the license application, as appropriate, the information specified in § 110.31. The Commission may also require the submission of additional information if necessary to complete its review.

(d) A consolidated license application may be filed covering multiple shipments.

(e) Information in a previous license application may be incorporated by reference.

(f) An applicant shall withdraw an application whenever it is no longer needed. The Commission's official files retain all documents related to a withdrawn application.

§ 110.31 Information required in license applications.

(a) Name and address of applicant.

(b) Name and address of supplier of equipment or material.

(c) Country of origin of equipment or material, if known.

(d) Names and addresses of all intermediate and ultimate consignees, other than intermediate consignees performing shipping services only.

(e) Dates of proposed first and last shipments.

(f) Description of the equipment or material including, as appropriate, the following:

(1) Maximum quantity of material in grams or kilograms (curies for byproduct material) and its chemical and physical form.

(2) For enriched uranium, the maximum weight percentage or enrichment and maximum weight of contained U-235.

(3) For nuclear equipment, total dollar value.

(4) For nuclear reactors, the name of the facility and its design power level.

(5) Description of end use by all consignees in sufficient detail to permit accurate evaluation of the justification for the proposed export or import, including the need for shipment by the dates specified.

13. Section 110.40 is amended by revising paragraph (b) to read as follows:

§ 110.40 Commission review.

* * * * *

(b) The Commissioners shall review a license application for export of the following:

(1) A production or utilization facility.

(2) More than one effective kilogram of high-enriched uranium, plutonium or U-233.

(3) 1,000 kilograms or more of heavy water or nuclear grade graphite.

(4) An export involving assistance to end uses related to isotope separation, chemical reprocessing, heavy water production, advanced reactors or the fabrication of nuclear fuel containing plutonium, except for categories of exports approved in advance by the Commission as constituting permitted incidental assistance.

(5) The initial export since March 10, 1978 of source or special nuclear material for nuclear end use.

(6) An export involving over (i) 10 grams of plutonium, U-233 or high-enriched uranium; (ii) 1 effective kilogram of low-enriched uranium; (iii) 250 kilograms of source material, heavy water or nuclear grade graphite; or (iv) 1,000 curies of tritium, to any country listed in §§ 110.28 or 110.29.

(7) Any export subject to special limitations as determined by the staff or a majority of the Commissioners.

* * * * *

14. Section 110.41 is amended by removing paragraph (d) and revising paragraph (a) to read as follows:

§ 110.41 Executive Branch review.

(a) A license application for export of the following will be promptly forwarded to the Executive Branch for review:

(1) A production or utilization facility.

(2) More than one effective kilogram of high-enriched uranium or 10 grams of plutonium or U-233.

(3) Deuterium, nuclear grade graphite, or over 100 curies of tritium.

(4) An export of source or special nuclear material under the US-IAEA Agreement for Cooperation.

(5) An export involving assistance to end uses related to isotope separation, chemical reprocessing, heavy water production, advanced reactors or the fabrication of nuclear fuel containing plutonium, except for categories of exports approved in advance by the Executive Branch as constituting permitted incidental assistance.

(6) The initial export of nuclear material or equipment to a foreign reactor.

(7) An export to any country listed in §§ 110.28 or 110.29.

(8) An export subject to special limitations as determined by the Commission or the Executive Branch.

* * * * *

15. Section 110.42 is amended by revising the introductory text of paragraph (a); paragraphs (a)(1), (3), (5), and (6); and paragraph (b), and by adding new paragraphs (a)(7) and (8), and (c) to read as follows:

§ 110.42 Export licensing criteria.

(a) The review of license applications for the export for peaceful nuclear uses of production or utilization facilities,[3] special nuclear material and source material is governed by the following criteria:

(1) IAEA safeguards as required by Article III (2) of the NPT will be applied with respect to any such facilities or material proposed to be exported, to any such material or facilities previously exported and subject to the applicable agreement for cooperation, and to any special nuclear material used in or produced through the use thereof;

* * * * *

(3) Adequate physical security measures will be maintained with respect to such facilities or material proposed to be exported and to any special nuclear material used in or produced through the use thereof. Physical security measures will be deemed adequate if such measures provide a level of protection equivalent to that set forth in § 110.43;

* * * * *

(5) No such material proposed to be exported and no special nuclear material produced through the use of such material will be reprocessed, and no irradiated fuel elements containing such material removed from a reactor will be altered in form or content, unless the prior approval of the United States is obtained for such reprocessing or alteration;

(6) With respect to exports of such facilities or material to nonnuclear weapon states, IAEA safeguards will be maintained with respect to all peaceful activities in, under the jurisdiction of, or carried out under the control of such state at the time of export. This criterion will not be applied if the Commission has been notified by the President in writing that failure to approve an export because this criterion has not been met would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security, in which case the provisions of section 128 of the Atomic Energy Act regarding Congressional review will apply;

(7) The proposed export of a facility or of more than 0.003 effective kilograms of special nuclear material, other than plutonium containing 80 percent or more by weight of plutonium-238, would be under the terms of an agreement for cooperation; and

(8) The proposed export is not inimical to the common defense and security and, in the case of facility exports, does not constitute an unreasonable risk to the public health and safety in the United States.

(b) The review of license applications for the export of nuclear equipment, other than a production or utilization facility, and for deuterium and nuclear grade graphite, is governed by the following criteria:

(1) IAEA safeguards as required by Article III (2) of the NPT will be applied with respect to such equipment or material;

(2) No such equipment or material will be used for any nuclear explosive device or for research on or development of any nuclear explosive device;

(3) No such equipment or material will be retransferred without the prior approval of the United States; and

(4) The proposed export is not inimical to the common defense and security.

(c) The review of license applications for the export of byproduct material and for source material for nonnuclear end uses is governed by the criterion that the proposed export is not inimical to the common defense and security.

16. Section 110.43 is amended by revising the introductory text of paragraph (a), paragraphs (a)(1), (b) and (c), by redesignating paragraph (a)(3) as paragraph (d) and revising the paragraph to read as follows:

§ 110.43 Physical security standards.

(a) Commission determinations on the adequacy of physical security programs in recipient countries for Category I quantities of nuclear material (see Appendix A) are based upon the following:

(1) Review of the physical security program established by the recipient country and of the implementation of the national requirements, as considered through country visits and other information exchanges, to ensure that the physical security measures provide, as a minimum, protection comparable to that set forth in International Atomic Energy Agency publication INFCIRC/225/Rev. 1, entitled "The Physical Protection of Nuclear Material"

[3] Exports of complete nuclear reactors, complete reactor pressure vessles, primary coolant pumps, control rods and reactor fuel charging and discharging machines are subject to the comprehensive export criteria in § 110.42(a). A complete nuclear reactor includes those parts and components, as specified in § 110.7(a), which are within or attached directly to the reactor vessel, which control the level of power in the reactor core, or which normally contain or come in direct contact with or control the primary coolant of the reactor. Nuclear reactor parts and components (other than complete pressure vessels, primary coolant pumps, control rods or fuel charging and discharging machines) when exported separately are subject to the export criteria in § 110.42(b).

(INFCIRC/225), which is incorporated by reference in this part. This incorporation by reference was approved by the Director of the Federal Register on May 3, 1978. Notice of any changes to the publication will be published in the Federal Register. Copies of INFCIRC/225 may be obtained from the Assistant Director for Export/Import and International Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and are available for inspection in the Commission Public Document Room. A copy is on file in the library of the Office of the Federal Register; and

* * * * *

(b) Commission determinations on the adequacy of physical security programs in recipient countries for Category II and III quantities of material (see Appendix A) are based on available relevant information and written assurances from the recipient country or group of countries that physical security measures providing, as a minimum, protection comparable to that set forth in INFCIRC /225 will be maintained.

(c) Commission determinations on the adequacy of physical security programs in recipient countries for exported facilities are made in accordance with the categories of material (see Appendix A) in use or in storage at the exported facilities and are based on available relevant information and written assurances from the recipient country or group of countries that physical security measures providing, as a minimum, protection comparable to that set forth in INFCIRC/225 will be maintained.

(d) Commission determinations may be based on a country-wide finding rather than on case-by-case analysis. The Commission will reexamine a determination whenever there are changed circumstances within a country that might reduce the effectiveness of its physical security program.

17. Section 110.44 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 110.44 Issuance or denial of licenses.

(a) The Commission will issue an export license if it has been notified by the State Department that it is the judgment of the Executive Branch that the proposed export will not be inimical to the common defense and security; and—

(1) Finds, based upon a reasonable judgment of the assurances provided and other information available to the Federal government, that the applicable criteria in §110.42, or their equivalent, are met, except that proposed exports to EURATOM countries are not required to meet the criteria in § 110.42(a) (4) and (5), if an Executive Order provides an exemption pursuant to section 126a of the Atomic Energy Act; or

(2) Finds that there are no material changed circumstances associated with an export license application (except for byproduct material applications) from those existing at the time of issuance of a prior license to export to the same country, if the prior license was issued under the provisions of paragraph (a)(1) of this section.

(b) If, after receiving the Executive Branch judgment that the issuance of a proposed export license will not be inimical to the common defense and security, the Commission does not issue the proposed license on a timely basis because it is unable to make the statutory determinatons required under the Atomic Energy Act, the Commission will publicly issue a decision to that effect, and will submit the license application to the President. The Commission's decision will include an explanation of the basis for the decision and any dissenting or separate views. The provisions in this paragraph do not apply to byproduct material license applications.

(c) The Commission will deny (1) any export license application for which the Executive Branch judgment does not recommend approval; (2) any byproduct material export license application for which the Commission is unable to make the finding in paragraph (a)(1) of this section; or 93) any import license application for which the Commission is unable to make the determination in paragraph (d) of this section. The applicant will be notified in writing of the reason for denial.

* * * * *

18. Section 110.45 is amended by revising the introductory text of paragraphs (a) and (b) and revising paragraph (c) to read as follows:

§ 110.45 Conduct resulting in termination of nuclear exports.

(a) Except as provided in paragraph (c), no license will be issued to export nuclear equipment or material listed in § 110.7, other than byproduct material, to any nonnuclear weapon state that is found by the President to have, after March 10, 1978:

* * * * *

(b) Except as provided in paragraph (c), no license will be issued to export nuclear equipment or material, other than byproduct material, to any country or group of countries that is found by the President to have, after March 10, 1078:

* * * * *

(c) Under section 129 of the Atomic Energy Act, the President may waive the requirement for the termination of exports to a country described in paragraph (a) or (b) of this section after determining in writing that the cessation of exports would seriously prejudice the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. If the President makes this determination, the Commission will issue licenses to export to that country, if other applicable statutory provisions are met.

19. Section 110.50 is amended by revising paragraph (b) to read as follows:

§ 110.50 Terms.

* * * * *

(b) Specific licenses.

(1) Each specific license will have an expiration date.

(2) A licensee may export or import only for the purpose stated in the license application.

(3) Unless a license specifically authorizes the export of Australian-origin nuclear material or equipment, a licensee shall notify in writing the Assistant Director for Export/Import and International Safeguards at least 40 days prior to export of Australian-origin nuclear material or equipment. A licensee may not ship this material or equipment until authorized by the Assistant Director for Export/Import and International Safeguards. The Assistant Director will not authorize shipment until after obtaining the consent of the Australian Government.

(4) A licensee authorized to export import special nuclear material is responsible for compliance with the physical protection requirements of Part 73 of this chapter, unless a domestic licensee of the Commission has assumed that responsibility and the Commission has been so notified.

(5) A license may be transferred, disposed of or assigned to another person only with the approval of the Commission by license amendment.

20. Section 110.51 is revised to read as follows:

§ 110.51 Amendment and renewal of licenses.

(a) A licensee may submit an application to renew a license or to amend a license.

(b) If an application to renew a license is submitted 30 days or more before the license expires, the license remains valid until the Commission acts on the

renewal application. An expired license is not renewable.

(c) An amendment is not required for—

(1) Changes in value (but not amount or quantity);

(2) Changes in the mailing addresses of intermediate or ultimate consignees, if the new addresses are within any of the importing countries specified in the license; or

(3) The addition of intermediate consignees, if they are within any of the importing countries specified in the license (for a nuclear equipment license only).

(d) In acting upon license renewal and amendment applications, the Commission will use, as appropriate, the same procedures and criteria it uses for original license applications.

21. Section 110.53 is amended by revising paragraph (b) to read as follows:

§ 110.53 United States address, records, and inspections.

* * * * *

(b) Each licensee shall maintain a record of each export or import for 5 years (2 years for byproduct material).

* * * * *

22. Section 110.70 is amended by revising paragraph (b) to read as follows:

§ 110.70 Public notice of receipt of an application.

* * * * *

(b) The Commission will also publish in the Federal Register a notice of receipt of an application for a license to export the following:

(1) A production or utilization facility.

(2) Five effective kilograms or more of plutonium, high-enriched uranium or uranium-233.

(3) 10,000 kilograms or more of heavy water or nuclear grade graphite.

* * * * *

23. Section 110.82 is amended by revising the introductory text of (b), and paragraph (b)(3) to read as follows:

§ 110.82 Hearing request or intervention petition.

* * * * *

(b) Hearing requests and intervention petitions must—

* * * * *

(3) Explain why a hearing or an intervention would be in the public interest and how a hearing or intervention would assist the Commission in making the determinations required by § 110.44.

* * * * *

24. Section 110.83 is amended by revising paragraph (a) to read as follows:

§110.83 Answers and replies.

(a) Unless otherwise specified by the Commission, an answer to a hearing request or intervention petition may be filed within 30 days after the request or petition has been served.

* * * * *

25. Section 110.84 is amended by revising paragraph (d) to read as follows:

* * * * *

§110.84 Commission action on a hearing request or intervention petition.

* * * * *

(d) Before granting or denying a hearing request or intervention petition, the Commission will review the Executive Branch's views on the license application and may request further information from the petitioner, requester, the Commission staff, the Executive Branch or others.

* * * * *

26. Section 110.89 is amended by revising paragraphs (a), (b), and (d)(1), and (d) introductory text is set out for the convenience of the user to read as follows:

§110.89 Filing and service.

(a) Hearing requests, intervention petitions, answers, replies and accompanying documents must be filed with the Commission by delivery or by mail or telegram to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Chief, Docketing and Service Branch. Filing by mail or telegram is complete upon deposit in the mail or with a telegraph company.

(b) All filing and Commission notices and orders must be served upon the applicant; the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; the Executive Secretary, Department of State, Washington, D.C. 20520; and participants if any. Hearing requests, intervention petitions, and answers and replies must be served by the person filing those pleadings.

* * * * *

(d) Proof of service, stating the name and address of the person served and the manner and date of service, shall be shown, and may be made by—

(1) Written acknowledgement of the person served or an authorized representative; or

* * * * *

27. Section 110.91 is revised to read as follows:

§110.91 Commission consultations.

The Commission may consult at any time on a license application with the staff, the Executive Branch or other persons.

28. Section 110.103 is amended by revising paragraph (a) to read as follows:

§110.103 Acceptance of hearing documents.

(a) Each document filed or issued must be clearly legible and shall bear the docket number, license application number and hearing title.

* * * * *

29. Appendix A and (reserved Appendix B are removed.

30. Appendix C to Part 110 is redesignated as Appendix A and amended by revising footnote c to read as follows:

Appendix A—Categorization of nuclear material

* * * * *

[c] Natural uranium, depleted uranium, thorium and quantities of uranium enriched to less than 10% not falling into Category III should be protected in accordance with prudent management practice.

* * * * *

Dated at Washington, D.C. this 24th day of February 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-5444 Filed 2-29-84; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-ANE-24]

Airworthiness Directive; General Electric CJ610-8A, -9 and CF700-2D, -2D-2 Turbine Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would impose a reduced retirement life for certain stage 1 turbine disks on General Electric Model CJ610-8A, -9 and CF700-2D, -2D-2 turbine engines. The proposed AD is prompted by reports of marginal disk material properties which could result in disk fracture.

DATES: Comments must be received on or before April 13, 1984.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attn: Rules Docket No. 83-ANE-24, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to: Room 311 at the above address.

Comments delivered must be marked: Docket No. 83-ANE-24.

Comments may be inspected at Room 311 on weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

The applicable service bulletin may be obtained from the Project Manager, CJ610/CF700, General Electric Company, 1000 Western Avenue, Lynn, Massachusetts 01910; telephone (617) 594-0100.

A copy of each of the service bulletins is contained in the Rules Docket at the above FAA address, and may be examined weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Robert E. Guyotte, General Aviation Engine Section, ANE-142, Engine Certification Branch, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7347.

SUPPLEMENTARY INFORMATION: 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 will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy 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 the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 83-ANE-24." The post card will be date/time stamped and returned to the commenter.

The FAA has determined that stage 1 turbine disks, P/N 5011T75P01 with serial numbers beginning with the letters GATSRM, installed in General Electric Model CJ610-8A,-9 and CF700-2D, -2D-2 turbine engines, have reduced cyclic life due to marginal material properties. Since this condition is likely to exist on engines incorporating these turbine disks, the proposed AD would require the removal of these disks from service, in accordance with General Electric Alert Service Bulletin (CJ610) A72-142 or (CF700) A72-145 prior to accumulating 5,000 total cycles.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

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 adding the following new airworthiness directive:

PART 39—[AMENDED]

General Electric Co.: Applies to General Electric CJ610-8A, -9 and CF700-2D,-2D-2 engines containing stage 1 turbine disks P/N 5011T75P01 with serial numbers beginning with the letters GATSRM.

Compliance is required as indicated (unless already accomplished).

To prevent failure of the stage 1 turbine disk, accomplish the following:

Remove the disk from service in accordance with General Electric Alert Service Bulletin (CJ610)A72-142 or (CF700) A72-145 dated February 24, 1983, prior to accumulating 5,000 total cycles.

The FAA will request the permission of the Director of the Federal Register to incorporate by reference, the manufacturer's Service Bulletins identified and described in this document.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Rivised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.85)

Note.—The FAA has determined that this proposed regulation only involves 45 engines, the approximate cost to each engine will not exceed $23,730 and substantial number of small entities are not affected. Therefore, I certify that this action (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 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 evaluation prepared for this document is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

Issued in Burlington, Massachusetts, on February 17, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84-5433 Filed 2-23-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-AGL-18]

Proposed Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This action withdraws a proposal published in the Federal Register on December 23, 1983 (48 FR 56766), to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71). The proposed amendment would have designated additional controlled airspace to accommodate a new VOR Runway 6 instrument approach procedure at Two Harbors Municipal Airport, Two Harbors, Minnesota. Subsequent to the publication of the Notice of Proposed Rulemaking, conducted FAA flight checks revealed that the Duluth VORTAC could not adequately support the proposed approach procedure due to course bends and roughness of radials in the Two Harbors area. As a result, the FAA has determined that the proposed amendment would not be feasible.

DATE: The notice of proposed rulemaking is withdrawn effective March 1, 1984.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Withdrawal of Proposal

Pursuant to the authority delegated to me, effective March 1, 1984 the proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as

described in Airspace Docket No. 83-AGL-18, and published in the Federal Register on December 23, 1983, (48 FR 56766), is hereby withdrawn.

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).

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it is certified that this—(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 26, 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 will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on February 10, 1984.

Monte R. Belger,

Director, Great Lakes Region.

[FR Doc. 84-5487 Filed 2-29-84; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1401

Chlorofluorocarbon Propellants; Proposed Deletion of Expired Reporting Requirement

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has decided not to extend the requirement that manufacturers of consumer products containing chlorofluorocarbon propellants report certain information concerning their products to the Commission. Since the authorization for this requirement has expired and the Commission has decided not to extend it, this document proposes to revoke the requirement. This action will not affect the requirement that manufacturers label their products with a specified statement concerning the effect of the propellant on the upper atmosphere.

DATES: Comments should be submitted by April 2, 1984.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C., 20207 or delivered to the Office of the Secretary, Consumer Product Safety Commission, 3rd floor, 5401 Westbard Avenue, Bethesda, Maryland.

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

SUPPLEMENTARY INFORMATION: During the 1970s, scientific information was obtained indicating that the release of certain chlorofluorocarbons into the atmosphere would produce chemical reactions that had the effect of reducing the concentration of ozone in the stratosphere. This in turn would allow a greater amount of ultraviolet radiation to reach the earth's surface, resulting in an increase in the incidence of skin cancer in humans, among other possible adverse effects.

In response to this hazard, several Federal agencies issued regulations banning the use of chlorofluorocarbon propellants in products under their jurisdiction, or requiring labeling of such products. The Commission issued 16 CFR Part 1401, which requires that self-pressurized consumer products containing chlorofluorocarbon propellants bear the following statement:

Warning.—Contains a chlorofluorocarbon that may harm the public health and environment by reducing ozone in the upper atmosphere.

16 CFR 1401.5. In addition, the Commission required the manfacturers of such products to submit to the Commission "an identification of such products by type, brand, and identifying features such as package size, package or label design, and production codes." 16 CFR 1401.4(a).

The reporting requirement of § 1401.4 was approved by the General Accounting Office under the Federal Reports Act for a period of three years, which expired February 28, 1981. Since Part 1401 was issued, however, most of the products originally subject to the requirement have been banned by the Environmental Protection Agency. 40 CFR Parts 712, 762; 43 FR 11301, March 17, 1978. Basically, the only consumer products containing chlorofluorocarbon propellants that have not been banned by EPA are those products where the chlorofluorocarbon propellant is not used to expel another liquid or solid substance from the container. An example of such products is cannisters containing a chlorofluorocarbon for powering boat or bicycle horns.

In view of the small number of products currently subject to Part 1401, the Commission preliminarily has decided not to extend the reporting requirement of § 1401.4. Accordingly, the Commission is proposing to delete that section from the CFR. The other requirements of Part 1401 will remain in effect. Because of the minor nature of the requirement and the small number of products affected, the Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. For the same reasons, the Commission concludes that this proposed revocation will have little or no potential for affecting the environment; therefore, neither an environmental assessment nor an environmental impact statement is required. Since the action proposed below relieves a restriction, the revocation of § 1401.4 is proposed to be effective immediately upon publication of the final rule in the Federal Register.

Therefore, under the authority of 15 U.S.C. 2076(e) and 44 U.S.C. 3507, the Commission proposes to revoke 16 CFR 1401.4.

Dated: February 27, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-5534 Filed 2-29-84; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 161

[Docket No. 84N-0024]

Canned Crab Meat; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is offering to interested persons an opportunity to review the "Recommended International Standard for Canned Crab Meat" (Codex Standard No. CAC/RS 90-1976) and to comment on the desirability of and need for a U.S. standard for this food. The Codex standard was submitted to the United States for consideration of acceptance by the Food and Agriculture Organization/World Health Organization's Codex Alimentarius Commission. If the comments received do not support the need for a U.S. standard for this food, FDA will not propose a standard.

DATE: Comments by April 30, 1984.

ADDRESS: Written comments, data, or other information to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Johnnie G. Nichols, Bureau of Foods (HFF-215), Food and Drug Administration, 200 C Street, SE., Washington, DC 20204, 202-485-0101.

SUPPLEMENTARY INFORMATION: The Food and Agriculture Organization (FAO) and the World Health Organization (WHO) jointly sponsor the Codex Alimentarius Commission, which conducts a program for developing worldwide food standards. Under the FAO/WHO program a large number of food standards have been developed and submitted to governments for acceptance, including a Codex standard for canned crab meat.

As a member of the Codex Alimentarius Commission, the United States is under treaty obligation to consider all Codex standards for acceptance. The rules of procedure of the Codex Alimentarius Commission state that a Codex standard may be accepted by a participating country in one of the three ways: Full acceptance, target acceptance, or acceptance with specified deviations. A commitment to accept at a designated future date constitutes target acceptance. A country's acceptance of a Code standard signifies that, except as provided for by specified deviations, a product that complies with the Codex standard may be distributed freely within the accepting country. A participating country that concludes that it will accept a Codex standard is requested to inform the Codex Alimentarius Commission of this fact and the reasons therefor, the manner in which similar foods marketed in the country differ from the Codex standard, and whether the country will permit products complying with the Codex standard to move freely in that country's commerce.

For the United States to accept some or all of the provisions of a Codex standard for any food to which the Federal Food, Drug, and Cosmetic Act (the act) applies, it is necessary either to establish a U.S. standard under authority of section 401 of the act (21 U.S.C. 341), or to revise an existing standard to incorporate the provisions within the U.S. standard. At present there are no U.S. standards for canned crab meat.

Under the procedure prescribed in 21 CFR 130.6(b)(3), FDA is providing an opportunity for review and informal comment on: (1) The desirability of and need for a U.S. standard for canned crab meat; (2) the specific provisions of the Codex standard; (3) additional or different requirements that should be in the U.S. standard, if established; and (4) any other pertinent points.

FDA advises that if the comments received do not support the need for a U.S. standard for this food, no U.S. standard will be proposed. If this decision is reached, the Codex Alimentarius Commission will be informed that an imported food that complies with the requirements of the Codex standard may move freely in interstate commerce in this country providing it complies with applicable U.S. laws and regulations.

Because of the large number of countries, often with diverse food regulations, that are associated with the development of Codex standards, certain provisions of the Codex standards may not be consistent with aspects of U.S. policy and regulations. Codex standards customarily include hygiene requirements, certain basic labeling requirements such as declaration of the net quantity of contents, name of manufacturer, and country of origin, and other factors. These factors are not considered a part of U.S. food standards under section 401 of the act; rather, they are dealt with under the authority of other sections of the act.

The Codex standard for canned crab meat specifies analytical methods by which compliance with certain provisions is to be determined. As stated in 21 CFR 2.19, FDA's policy is to employ the methods in the latest edition of "Official Methods of Analysis of the Association of Official Analytical Chemists," when these are available, in preference to other methods. FDA will adhere to this policy in any U.S. standard proposed under this notice.

Under § 130.6(c), all persons who wish to submit comments are encouraged and requested to consult with different interested groups (consumers, industry, academic community, professional organizations, and others) in formulating their comments, and to include a statement of any meetings or discussions that have been held with other groups.

List of Subjects in 21 CFR Part 161

Fish; Food standards, Seafood.

The Codex standard under consideration is as follows:

Recommended International Standard for Canned Crab Meat

1. *Scope*

This standard applies to canned crab meat. It does not apply to speciality products where the crab meat constitutes only a part of the edible contents nor to products which include other edible parts of the crab.

2. *Description*

2.1 Product Definition: Canned crab meat is the product:

(a) *Prepared* from the leg, claw, body and shoulder meat from which the shell has been removed, of any of the edible species of the sub-order Brachyura of the order Decapoda and all species of the family Lithodidae;

(b) *Packed* with or without packing medium in hermetically sealed containers; and

(c) *Processed* by heat so as to prevent spoilage.

2.2 Presentation: Canned crab meat shall be presented as follows:

2.2.1 Twin Face Pack (Two End Leg Pack). The top and the bottom of the content of the pack shall consist of leg meat or leg meat together with either claw or shoulder meat having their original conformation except that leg meat may be cut to fit the can width. The pieces shall appear well arranged and the inner portion of the content of the pack shall consist of (solid) pieces of crab meat and/or flakes.

2.2.2. Single Face Pack (One End Leg Pack). Either end of the content of the pack shall consist of leg meat or leg meat together with either claw or shoulder meat having their original conformation except that leg meat may be cut to fit the can width. The pieces shall appear well arranged and the remaining content of the pack shall consist of (solid) pieces of crab meat and/or flakes.

2.2.3. Chunk Pack—consists of (solid) pieces or chunks of crab meat ($\geq$ 50% m/m) and flakes.

2.2.4. Flake Pack—consists of flakes ($\geq$ 50% m/m) and (solid) pieces and chunks.

2.2.5 Lump Pack—consists of large segments of crab meat from the back fin cavity of the blue crab only, having its original conformation.,

2.2.6 Claw Pack—consists of claw meat only having its original conformation.

2.2.7 Other Presentations—Any other presentation of the product shall be permitted provided that it:

(i) Is sufficiently distinctive from other forms of presentation laid down in this standard;

(ii) Meets all the other requirements of this standard;

(iii) Is adequately described on the lable to avoid confusing or misleading the consumer.

3. *Essential Composition and Quality Factors*

3.1 Raw Material: Canned crab meat shall be prepared from clean, sound crab of the designated species which are alive immediately prior to the commencement of processing, and of a quality suitable for human consumption.

3.2 Optional Ingredients:

—Potable water of properties in accordance with WHO requirements contained in the "International Standard for Drinking Water"

—Salt

3.3 Processing: The crab shall be cooked

and the meat shucked. Damaged or discoloured meat associated with bruises or small wounds shall be removed. The meat shall be cleaned and packed in cans, with or without wrapping.

3.4 Final Product:

(a) Appearance. On opening the cans shall appear well filled and be well arranged where appropriate for the style of presentation.

Canned crab meat shall have a colour characteristic of the species canned and shall be practically free from discoloration (e.g. blue discoloration, browning or black spots).

(b) Odour and Flavour. Canned crab meat shall have an odour and flavour characteristic of the species canned and be free from objectionable odours and flavours of any kind.

(c) *Texture.* Canned crab meat shall have a texture characteristic of the species canned and shall not be mushy.

(d) *Objectionable Matter.* Canned crab meat shall be free from foreign matter and practically free from struvite crystals, shall particles, antennae or other extraneous material.

4. *Food Additives*

Additive	Maximum level in the final product
pH Regulating Agents:	
Disodium diphosphate (Syn.: Sodium acid pyrophosphate).	5g/kg, singly or in combination expressed as P_2O_5.
Phosphoric acid	
Citric acid	Limited by Good Manufacturing Practice.
Flavour enhancer: Monosodium glutamate	500 mg/kg.

5. *Hygiene*

5.1 It is recommended that the product covered by the provisions of this standard be prepared in accordance with the following Codes: (i) The appropriate sections of the Recommended International Code of Practice—General Principles of Food Hygiene (CAC/RCP 1–1969), (ii) the Recommended International Code of Practice for Canned Fish (CAC/RCP 10–1976).

5.2 To the extent possible in good manufacturing practice the product shall be free from objectionable matter..

5.3 When tested by appropriate methods of sampling and examination, the product:

(a) Shall be free from micro-organisms capable of development under normal conditions of storage; and

(b) Shall not contain any substances originating from micro-organisms in amounts which may represent a hazard to health.

5.4 Products with an equilibrium pH above 4.6 shall have received a processing treatment sufficient to destroy all spores of Clostridium botulinum, unless growth of surviving spores is permanently prevented by product characteristics other than pH.

6. *Weights and Measures*

FILL OF CONTAINER

Expression of fill / Type of pack	Net contents (% of the water capacity of the container)	Drained crab meat (% of the water capacity of the container)
Wrapped	≥80% m/m	≥ 64% m/m.
Unwrapped	≥88% m/m	≥ 70% m/m.

7. *Labelling*

In addition to Sections 1, 2, 4 and 6 of the Recommended International General Standard for the Labelling of Prepackaged Foods (CAC/RS 1–1969) the following specific provisions shall apply.

7.1 The Name of the Food: The name of the product as declared on the label shall be "crab meat" preceded or followed by the common or usual name applied to the species legally accepted in the country where the product is distributed.

7.2 Presentation: The forms of presentation as described in sub-section 2.2.1–2.2.6 respectively shall be declared as follows:

7.2.1 Twin Face Pack (Two End Leg Pack).

7.2.2 Single Face Pack (One End Leg Pack).

7.2.3 Chunk Pack.

7.2.4 Flake Pack.

7.2.5 Lump Pack.

7.2.6 Claw Pack.

7.2.7 Other Presentations—If the product is produced in accordance with sub-section 2.2.7 the label shall contain in close proximity to the words "crab meat" such additional words or phrases that will avoid misleading or confusing the consumer.

7.3 List of Ingredients: A complete list of ingredients shall be declared on the label in descending order of proportion.

7.4 Declaration of Contents: The weight of the net contents exclusive of wrapping material and the weight of the drained crab meat shall be declared in either the metric system ("Systeme International" units) or avoirdupois or both systems of measurement as required by the country in which the product is sold.

7.5 Name and Address: The name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the product shall be declared.

7.6 Country of Origin: The country of origin of the product shall be declared.

7.7 Lot Identification: Each container shall be embossed or otherwise permanently marked in code or in clear to identify the producing factory and the lot.

8. *Methods of Sampling, Analysis and Examination*

The methods of sampling, analysis and examination described hereunder are international referee methods.

8.1 Sampling for Destructive Examination: Sampling of lots for examination of the product shall be in accordance with the FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Food (AQL–6.5) (CAC/RM 42–1969).

8.2 Organoleptic Assessment: Organoleptic assessment of the product shall be made only by persons trained in such assessment.

8.3 Determination of Net Content: Net content shall be determined by averaging the results from all containers of a sample representing a lot, provided that there shall be no unreasonable underweight in any individual container.

Procedure:

(i) Weigh the unopened container.

(ii) Open and pour out the contents and allow the container to drain for two minutes.

(iii) Weigh the empty container, including the top and wrapping material if present, after removing excess broth or liquid and adhering meat.

(iv) Subtract the mass of the empty container and wrapping material, if present, from the mass of the unopened container. The resultant figure shall be considered to be the net content.

8.4 Determination of Drained Weight: Drained weight of crab meat shall be determined by averaging the results from all containers of a sample representing a lot, provided that there shall be no unreasonable underweight in any individual container.

(a) Specifications for Circular Sieve:

(i) If the quantity of the total contents of the container is less than 1.5 kg (3 lbs) use a sieve with a diameter of 20 cm (8 in.).

(ii) If the quantity of the total contents of the container is 1.5 kg (3 lbs) or more, use a sieve with a diameter of 30 cm (12 in.).

(iii) The meshes of sieves are made by so weaving wire as to form square openings of 2.8 mm by 2.8 mm.

(b) Procedure:

(i) Keep the containers at a temperature of not less than 20° C (68° F) or more than 24°C (75°F) for a minimum of 12 hours prior to examination.

(ii) Open the container and tilt so as to distribute the contents over the meshes of a circular sieve which has been previously weighed.

(iii) Remove all wrapping material and incline the sieve at an angle of approximately 17°–20° and allow the crab meat to drain two minutes, measured from the time the product is poured into the sieve.

(iv) Weigh the sieve containing the drained crab meat.

(c) Calculation and Expression of Drained Crab Meat: The percentage m/m drained crab meat is given by the following equation:

$$\frac{m_2 - m_1}{m_w} \times 100$$

where:

m_1 = mass of the sieve

m_2 = mass of the sieve plus drained product

m_w = water capacity of the container as determined in sub-section 8.5

8.5 Determination of Water Capacity of Container Procedure:

(i) Select a container which is undamaged in all respects.

(ii) Wash, dry, and weigh the empty container after cutting out the lid without

removing or altering the height of the double seam.

(iii) Fill the container with distilled water at 20°C (68°F) to 5 mm vertical distance below the top level of the container, and weigh the container thus filled.

(iv) Subtract the weight found in (ii) from the weight found in (iii). The difference shall be considered to be the weight of water required to fill the container.

9. *Classification of "Defectives"*

A container which fails to meet any of the applicable requirements for appearance, odour and flavour, texture and objectionable matter as set out in sub-sections 3.4.1 (a), (b), (c) and (d) shall be considered a "defective."

10. *Lot Acceptance*

A lot will be considered as meeting the requirements of this standard when the total number of "defectives" does not exceed the acceptance number (c) of the appropriate sampling plan in the Sampling Plans for Prepackaged Foods (AQL-6.5) (CAC/RM 42-1969) and when the average net contents and the average weight of drained crab meat of all containers examined is not less than the specified minimum and/or the declared weight, provided there in no unreasonable shortage in individual containers.

Interested persons may, on or before April 30, 1984, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Any comments submitted in support of establishing a U.S. standard for canned crab meat should be supported by appropriate information and data regarding impact on small business consistent with the provisions of the Regulatory Flexibility Act (Pub. L. 96-354). (Executive Order 12291 does not apply to regulations issued in accordance with formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557). Food standards promulgated under 21 U.S.C. 341 and 371(e) fall under this exemption.)

Dated February 17, 1984.

Richard J. Ronk,

Acting Director, Bureau of Foods.

[FR Doc. 84-5514 Filed 2-29-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-84-1139; FR-1827]

A User Fee Schedule for the Technical Suitability of Products Program (Section 521 of the National Housing Act)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule would establish a new system of fees to be charged manufacturers of products and materials who seek HUD acceptance thereof under the Technical Suitability of Products Program. Fees would also be charged for the review of program administrators' applications under 24 CFR 200.935. As a result, some of the costs associated with reviewing applications and determining the acceptability of a product or a building system would be borne by the party requesting the review or determination. Additionally, the rule would supplement existing processing procedures by establishing procedures necessary for administration of the fee system.

DATE: Comments must be received by April 30, 1984.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Donald R. Fairman, Office of Manufactured Housing and Construction Standards, Department of Housing and Urban Development, Room 3222, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone number (202) 755-5718. (This is not a toll free-number.)

SUPPLEMENTARY INFORMATION: *HUD's Technical Suitability of Products Program.* Section 521 of the National Housing Act (12 U.S.C. 1735e), which was added by section 216 of the Housing and Urban Development Act of 1965 (Pub. L. 89-117), requires the Department of Housing and Urban Development (HUD) to adopt a uniform procedure for the acceptance of materials and products to be used in structures approved for mortgages or loans insured under the National Housing Act. To carry out this mandate, HUD instituted the Technical Suitability of Products Program. Under this program, manufacturers of housing-related materials, products, or structural housing systems submit to HUD designs that they propose for use in these structures. If the Department determines that the proposed product or system is acceptable, it issues a document of technical suitability. These documents are considered additions to the Minimum Property Standards applicable to these structures.

Issuance of these documents enables HUD to recognize new building technology, to encourage innovative advances in housing, to confirm the acceptability of both modular housing and components that cannot be inspected fully after delivery to the building site, and to promulgate or adopt certification programs for specific products or systems. No fee, as is now proposed by this rule, is currently charged for the issuance of these documents. This rule does not, however, alter the responsibility of a producer or manufacturer for assuming all expenses related to the development and testing of its product.

There are several types of documents of technical suitability. Engineering Bulletins provide for HUD acceptance of structural systems or subsystems that are determined to be technically suitable for use in HUD housing programs. These bulletins describe the system or product and set forth the design performance requirements, quality control procedures, and factory inspections required by the Department. There are three types of Engineering Bulletins: Mechanical Engineering Bulletins (MEBs); Structural Engineering Bulletins (SEBs); and Truss Connector Bulletins (TCBs).

Similarly, Material Releases (MRs) provide for HUD acceptance of building materials or products determined to be technically suitable for use in HUD housing programs, but which are not specifically covered by the Minimum Property Standards.

The Department also issues Use of Materials Bulletins (UMs). These bulletins are issued for two purposes. First, they serve as an interim standard for a particular class of like products. Second, they are used as a means of promulgating or adopting a certification program for specific class of materials, products, or systems.

Under the program too, field offices issued Area Letters of Acceptance (ALAs). These ALAs provide for HUD acceptance of industrialized housing that has a limited distribution and that uses materials and systems covered by the Minimum Property Standards. The ALAs are effective only within the HUD region of the issuing field office.

In addition to the documents of technical suitability, the program provides a mechanism whereby "organizations acceptable to HUD validate manufacturers' certifications that certain building products or materials meet this acceptable standards" 24 CFR § 200.935. Under this section, applicants wishing to administer a certification program may qualify for HUD acceptance by meeting specified requirements.

Statutory Authority: Section 7(j) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(j), authorizes the Secretary of HUD "to establish fees and charges, chargeable against program beneficiaries and project participants, which shall be adequate to cover over the long run, costs of inspection, project review and financing service, audit by Federal or federally authorized auditors, and other beneficial rights, privileges, licenses, and services." Accordingly, the Department is instituting a system of fees to cover the costs of the beneficial services provided by the Technical Suitability of Products Program. The proposed fee system would partially shift the costs associated with the Program to the recipients of the Program's benefits.

The Proposed Fee System

Most fees for services under the Technical Suitability of Products program would be payable in part at the time the manufacturer or proponent applies for HUD acceptance. The manufacturer or proponent would then remit the remainder of the fee when it concurs in the accuracy of the physical description as well as the representations of the product identified in the proposed issuance. The fees for renewal and for Departmental review of applications for program adminstrators under 24 CFR 200.935 would be payable in full at the time of application. The rule sets forth specific processing procedures that would facilitate administration of the fee system. These procedures would govern such things as renewal and cancellation of applications, revision of issuances, refund of fees, and identification of issuances.

A proposed initial fee schedule for specific processing procedures is set forth below. The Department will publish, by Notice in the Federal Register, this fee schedule (or a revised fee schedule, if appropriate) at the time of publication of the final rule. The Department may amend the schedule at any time thereafter by Notice published in the Federal Register.

The Department will not charge fees for the issuance of Truss Connector Bulletins. Because of the standardization of Truss Connectors, the Department believes it may no longer be necessary to issue a bulletin for the approval of new Truss Connectors and is considering phasing out the issuance of TCBs. For this reason the Department believes it unnecessary to include in the schedule a fee for issuance of TCBs.

The Department will not charge fees for the issuance of Use of Materials Bulletins where they are issued as the standard for a particular class of like products. In such a case, the UMs serve as the general standard for the class of products affected. Therefore, the Department has decided not to charge a fee because the UM would be issued for use by the entire industry, and not for the proprietary use of a specific manufacturer.

Fee Schedule

(i) Initial Applications:
- Structural Engineering Bulletins (SEB), $1,500.00
- Mechanical Engineering Bulletins (MEB), $1,500.00
- Materials Releases (MR), $1,500.00
- Area Letters of Acceptance (ALA), $500.00
- Administrator Review for Acceptance, $500.00

(ii) Revisions:
- Structural Engineering Bulletins, $1,000.00
- Mechanical Engineering Bulletins, $1,000.00
- Materials Releases, $300.00
- Area Letters of Acceptance, $250.00

(iii) Basic renewal fee without revision (assessed $100.00 every three years).

Environmental Impact

Pursuant to HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, the Department has prepared a Finding of No Significant Impact with respect to the environment. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, at the above address.

Regulatory Analysis

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The fees as proposed would be nominal and negligible, especially in relation to other expenditures such as research and development as well as manufacture of a product. Further, as with other development costs these fees would be amortizable over the terms of production of the product or system.

This rule is listed in the Department's Semiannual Agenda of Regulations published on October 17, 1983 (48 FR 47431) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Please send any comments regarding the collection of information requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Attention: Desk Officer for HUD.

The Catalog of Federal Domestic Assistance does not apply to this rule.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs: Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum Property Standards, Incorporation by reference.

Accordingly, the Department proposes to amend 24 CFR Part 200 by adding a new § 200.934, to read as follows:

PART 200—INTRODUCTION

In Part 200, add a new § 200.934 to read as follows:

§ 200.934 User Fee Schedule for the Technical Suitability of Products Program.

(a) *General.* This section establishes fee requirements for the issuance of

Structural Engineering Bulletins (SEBs), Mechanical Engineering Bulletins (MEBs), Area Letters of Acceptance (ALAs), Materials Releases (MRs) and review of program administrator applications submitted pursuant to § 200.935 of this title.

(b) *Filing Address*—(1) *Applications Containing Payment.* When applications for or correspondence concerning SEBs, MEBs, MRs or program administrator approval contain payment, such applications or correspondence shall be sent to the following address:

Office of Finance and Accounting, Insurance Accounting Division, Cash and Securities Section—MIA, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

(2) *Other Correspondence.* All other correspondence concerning SEBs, MEBs, MRs and program administrator acceptance shall be sent to the following address:

Office of Manufactured Housing and Construction Standards, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

(3) *Applications for ALAs.* Applications for or correspondence concerning ALAs shall be submitted to the Housing Division of the field office having jurisdiction over the area in which the production facility of the system is located, except that applications containing payment shall be addressed to the attention of the Collection Officer for deposit to Account No. 86-09-0300.

(c) *Fees.* Applicants for renewal and applicants for acceptance as program administrators under § 200.935 of this rule shall include the entire processing fee with the application. All other applicants shall submit one half of the required processing fee with each application. The applicant shall pay the balance when the draft issuance is returned to HUD with the applicant's concurrence signature. The Department will not prepare a final document for printing and distribution until it has received the full processing fee. From time to time as may be necessary, the Department will set out and amend the fee schedule by publication of a Notice in the Federal Register.

(d) *Initial Application and Review*—(1) *Content of Applications.* Each application shall include only one item. All applications will be promptly processed on receipt by the Department.

(i) With respect to Mechanical Engineering Bulletins (MEBs), Structural Engineering Bulletins (SEBs), and Area Letters of Acceptance (ALAs), each structural design shall constitute a different item.

(ii) With respect to Materials Releases (MRs), each product or system shall constitute a different item.

(2) *Revisions.* A recipient of a technical suitability document issued by the Department may apply for revision of that document at any time. The revision may be in the form of an amendment of or supplement to the document, for which the recipient will be charged the applicable revision fee. However, where the Department determines that a proposed revision constitutes a different item, the schedule of fees for initial applications shall apply.

(3) *Renewals.* Each issuance shall be valid for a period of three years from the date of initial issuance or most recent renewal, whichever is later. An applicant shall submit an application for renewal with the entire required fee three months before the expiration of the three year period. Failure to submit a timely renewal application along with the required fee shall constitute a basis for cancellation of the issuance.

(4) *Initial and Revision Applications Requiring Further Study or Additional Data.* In its discretion, the Department may request an applicant to submit additional data or to conduct further study to supplement or clarify an initial application or an application for revision of a previously issued technical suitability document. If the applicant fails to comply with the Department's request within ninety days of the date of that request or within such longer time as may be specified by the Secretary, the Department will return the application to the applicant. The Department will not refund any fees paid toward an application returned under this paragraph. The application will be considered further only if it is resubmitted along with payment of the full fee as required by these regulations.

(5) *Ineligible Applications.* If the Secretary determines that an application or request will not be considered because it is not eligible for issuance of a technical suitability document, the Department will promptly return the application or request, refund any fees paid, and explain why the application or request is ineligible.

(6) *Cancellation of a Technical Suitability Document.* If the Department determines that (i) the conditions under which a technical suitability document was issued have so changed as to affect the production of, or to compromise the integrity of, the material, product, or system approved thereby, or (ii) that the producer has changed its organizational form without notifying HUD, or (iii) that the producer is not complying with the responsibilities it assumed as a condition of HUD's acceptance of its material, product or system, the Department will notify the producer or manufacturer that the technical suitability document may be cancelled. However, before cancelling a technical suitability document, the Department will give the manufacturer reasonable notice in writing of the specific reasons therefor, and an opportunity to present its views on why the technical suitability document should not be cancelled. No refund of fees will be made on a cancelled document.

(e) *Identification.* (1) Applications for issuance of a MEB, SEB, or MR submitted to HUD Headquarters will be identified with a case number. The applicant will be notified of the case number when receipt of the application is acknowledged. Thereafter, the case number will be used on all correspondence relating to the application. When a final draft of a new document is prepared for publication and distribution, a bulletin or release number will be assigned to the new issuance.

(2) In the case of an application for an ALA submitted to a field office, the application will be processed in accordance with the identification and processing procedures established by the responsible field office. The field office will notify the applicant of receipt of the application and inform the applicant of the procedures that will be followed with respect to the issuance of an ALA.

Authority: Sections 7 (d) and (j) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535 (d) and (j); Section 521 of the National Housing Act, 12 U.S.C. 1735e.

Dated: February 16, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-5619 Filed 2-29-84; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1928

[Docket No. H-308]

Field Sanitation

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposal is consistent with an agreement settling certain litigation described herein. The Occupational Safety and Health Administration is proposing to amend 29 CFR Part 1928, Standards for Agriculture by adding a new § 1928.110, Field Sanitation. The proposed standard would require agricultural employers to provide toilets, potable water, and handwashing facilities for farm employees engaged in hand labor. Adverse health effects are commonly associated with the absence of these sanitation facilities. Farming operations that employ 10 or fewer such employees, or that require hand-labor of shord duration (3 hours or less), or that involve hand-labor operations conducted inside of permanent structures would be excluded from coverage under the standard. At issue is whether an OSHA standard is reasonably necessary or appropriate to deal with these health effects in the context of agricultural field labor. The public is invited to comment on all relevant issues, including the need for standard.

DATES: Comments on the proposed standard must be postmarked by April 16, 1984.

ADDRESSES: Data, comments and information should be submitted to the Docket Office, Docket No. H-308, Room S6212, Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210; Telephone (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Room N3637, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, D.C. 20210; Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION: As an aid to the reader, the following is an outline of the contents of the Federal Register notice.

I. Legal History
II. Preliminary Statement
III. Background
IV. Health Effects:
  A. Health Issues
  B. Health Hazards in the Agricultural Field
    1. Heat-related illness
    2. Communicable diseases
    3. Urinary tract infections
    4. Pesticides
  C. Availability of Data on Disease Prevalence
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V. The Regulatory Environment
  A. State Regulation
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VI. Summary of Comments in Response to ANPR
  A. Scope
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  C. Existing Workplace Conditions
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VII. Discussion of Proposed Standard
  A. Scope
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  C. Potable Drinking Water
  D. Toilet and Handwashing Facilities
  E. Maintenance
VIII. Summary of the Regulatory Impact and Regulatory Flexibility Assessment; Costs
IX. Environmental Assessment
X. References
XI. Public Participation
XII. State Plan Standards
XIII. Authority and Signature

I. Legal History

In order to understand the context of this rulemaking, it is necessary to trace the legal history which preceded publication of this notice. On September 1, 1972, the Migrant Legal Action Program, Inc. (MLAP), on behalf of the National Congress of Hispanic American Citizens and several other organizations representing migrant and seasonal farm workers, petitioned OSHA to issue a standard for agricultural workers in the field requiring potable drinking water, handwashing facilities, and toilet facilities. The petition stated that agricultural workers, are not adequately provided such facilities. It alleged that because of these existing inadequacies, communicable diseases are spread and other health problems are created. In response to the petition, OSHA requested information from the Standards Advisory Committee for Agriculture (SACA) which concluded that a standard was needed and submitted a proposed standard to OSHA. In 1973, dissatisfied with OSHA's progress, MLAP filed suit in U.S. District Court to compel OSHA to issue a standard.

The litigation that commenced in 1973 has continued. In the initial suit seeking to compel OSHA to issue a field sanitation standard, the U.S. District Court for the District of Columbia granted the relief sought by the National Congress of Hispanic American Citizens in October 1975. It held that the statutory guidelines of section 6(b)(1)-(4) of the Occupational Safety and Health Act of 1970 (OSH Act) constituted mandatory time frames, which were triggered once the Secretary of Labor began action on the standard, and that the Secretary had violated these mandatory time frames. *National Congress of Hispanic American Citizens v. Dunlop,* 425 F. Supp. 900 (D.D.C. 1975). On appeal by the Secretary, the Court of Appeals reversed the lower court's dicision. *National Congress of Hispanic American Citizens v. Usery,* 554 F. 2d 1196 (D.C. Cir. 1977) (also known as *El Congreso I*). The appeals court held that the Act's time frames are not mandatory and that the Secretary may "rationally order priorities and reallocate his resources at any rulemaking stage" so long as "his discretion is honestly and fairly exercised." Remanding the case to the District Court for action, the D.C. Courth of Appeals ordered the Secretary to file a report on the proposed field sanitation standard, including a timetable for its development.

In September 1978, the Secretary submitted a report indicating that because of existing priorities no action would be taken on the standard for eighteen months. In December 1978, the District Court rejected the Secretary's report and ordered the Secretary "to complete development of a field sanitation standard . . . as soon as possible." *National Congress of Hispanic American Citizens v. Marshall,* No. 2142-73 (D.D.C. December 21, 1978). The Secretary again appealed, and the District Court's decision again was reversed. *National Congress of Hispanic American Citizens v. Marshall,* 626 F. 2d 882 (D.C. Cir. 1979) (also known as *El Congreso II*). The appeals court ruled that the lower court had "impermissibly substituted its judgement" for OSHA's. In remanding the case once more to the District Court, the Court of Appeals directed the District Court to require the Secretary to provide a timetable reflecting his "good faith representation . . . regarding his reasonable expectation as to when the standard will be forthcoming." The Court of Appeals recognized that modifications in such a timetable might be justified by circumstances requiring readjustments of priorities. Such readjustments, the Court held, are proper so long as made in good faith.

In June 1980, OSHA filed another timetable, indicating that completion of a standard would take at least forty-five months. In December 1980, the District Court (D.D.C. Civ. Action No. 2142-73) conducted a five-day hearing to determine whether that timetable was consistent with the criteria set down in *El Congreso II,* 626 F. 2d 882 (D.C. Cir. 1979). At the hearing, the plaintiffs presented expert testimony and exhibits to show that medical and scientific opinion supported the need for field sanitation facilities. The Agency agreed that the absence and inadequacy of sanitation facilities may result in disease, but contended that the existing administrative record was an inadequate basis for issuance of a final standard and that further information was needed.

In 1981, the Secretary asked the District Court for time to permit the newly designated Assistant Secretary for OSHA to evaluate the June 1980 timetable before the court ruled on it (*National Congress of Hispanic American Citizens v. Raymond J. Donovan*, Civil Action No. 2142–73). The Secretary stated that intervening circumstances required a review of priorities and the timetable. The District Court approved the Secretary's request, and on August 17, 1981, the Assistant Secretary filed another timetable stating that the standard would be developed in a 34–39 month period, following an initial two-year deferral. OSHA asserted that a deferral period was necessary because in the interim all available resources would be allocated to the development of higher priority standards. The plaintiffs asked the court to order OSHA to complete a standard within a period they claimed to be feasible: 23–39 months.

On October 30, 1981, the District Court rejected the OSHA timetable. The Court ruled in favor of plaintiffs and ordered OSHA to make a good faith effort to promulgate a standard within 18 months. *National Congress of Hispanic American Citizens v. Raymond J. Donovan*, No. 2142–73. OSHA appealed to the D.C. Circuit Court of Appeals, seeking a stay of the lower court's order pending a decision on the merits. *National Congress of Hispanic American Citizens v. Raymond J. Donovan*, (D.C. Cir. Nos. 81–2344, 81–2376). The stay was granted. Before the appellate hearing, OSHA negotiated a settlement with complainants. The District Court approved the settlement on July 16, 1982.

Under the settlement, OSHA has agreed to make a good faith effort to develop, propose and complete a field sanitation standard or, alternatively, to publish in the Federal Register a determination that no such occupational safety and health standard is needed. Should OSHA determine that no standard is needed and should the plaintiffs disagree with OSHA's published reasons for not promulgating a standard, under the court order the plaintiffs reserve the right to return to court to challenge OSHA's decision. An agreed-upon schedule for proceeding was negotiated. The schedule provides for OSHA to make a good faith effort to publish a proposal within 15–18 months, to hold hearings on any published proposal within 20–23 months and to publish a final standard within 31 months. This proposal is issued in compliance with that settlement agreement.

If OSHA is unable to meet any of these deadlines, OSHA is required to file an affidavit with the D.C. District Court explaining why the deadline cannot be met and estimating when the task will be completed. If the plaintiffs then petition the court to compel OSHA to comply with the dates provided in the agreement, OSHA has the burden of demonstrating that the proposed deviation reflects a good faith effort to complete the standard.

II. Preliminary Statement

The Occupational Safety and Health Act (29 U.S.C. 651, et seq.) was enacted "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources. . . ." The Secretary in establishing standards to deal with toxic materials and harmful physical agents is required by the OSH Act to "set the standards which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life" (29 U.S.C. 655).

Agricultural employees are covered by the OSH Act. OSHA's current authority to regulate agricultural establishments is limited, however, by a rider to the annual House Appropriation Bill, Pub. L. 98–139 (ex. 11–009). This rider prohibits OSHA from regulating employers engaged in a farming operation that does not maintain a temporary labor camp and that employs 10 or fewer employees.

OSHA has several standards for the safety and health of agricultural employees (29 CFR Part 1928, ex. 11–024), but they do not include rules for sanitation. A separate OSHA standard does require sanitation facilities in temporary labor camps (29 CFR Part 1910.142, ex. 11–020), where most migrant farm workers reside while working away from home. That standard, however, does not require sanitation facilities in the field. This proposed standard would require employers to provide sanitation facilities to field workers and is consistent with the settlement agreement.

An estimated 766,000 hired farm workers would be covered by this proposal (Ex. 11–028). Many of these workers are migrant workers, who can contract and pass on communicable diseases as they move across the states. Large groups of migrant workers who provide hand labor to cultivate and harvest food and fiber crops typically spend the winter months in South Texas, Florida and California, where the mild climate provides growing seasons of 300 or more days per year. During the cultivating and harvesting seasons these workers find employment along three principal routes in other parts of the continental United States. The group based in Florida travels north to work in the eastern states and the workers residing in Texas and Mexico travel north to work in the midwestern and far northwestern states, respectively. Migrant workers originating in California and Mexico find work along the West Coast. Other non-migrant workers remain throughout the year near their sources of summer employment to form a permanent cadre of seasonal and part-time workers.

The absence or inadequacy of basic sanitation and hygiene has long been recognized by medical science as a principal factor in the transmission of bacterial, viral and parasitic diseases. Inadequate water supply and human waste removal have produced critical health problems for hundreds of years. The provisions for potable drinking water, the proper disposal of human wastes, and the use of personal and public hygienic practices are known to prevent the transmission of these communicable diseases.

The main issues raised by the current proposal include the following. OSHA solicits comments on these issues, as well as on all other issues raised by the proposal.

1. *Significant risk.* Is an occupational safety and health standard requiring sanitation facilities at the worksite, including potable drinking water, and toilet and handwashing facilities, necessary and warranted to protect the health of agricultural field workers from significant risk of harm?

In particular, in light of limitations on quantitive data showing excess risk of disease among field workers specifically attributable to a lack of drinking water, toilet and handwashing facilities in the field and of specific data showing that provision of those items in the field would in fact substantially reduce the incidence of disease among fieldworkers; in light of the existence of state field sanitation standards covering a substantial portion of such workers; and in light of the fact of voluntary provision of these items by agricultural employers; there is serious question whether the evidence in the record establishes the need for a federal field sanitation standard. Nonetheless, OSHA believes it would be premature before notice, comment and public hearings for

the agency to conclude that the need is insufficient to justify issuing a standard. OSHA, therefore, particularly seeks comment and data on the matter of need.

2. *Scope.* Should the standard apply to agricultural employees other than field workers engaged in hand labor operations?

3. *Specifications.* Is it appropriate to specify a minimum ratio of toilets and handwashing facilities for a particular number of field workers and a required distance from field workers within which these facilities must be located? If not, what should the standard require? If so, what should be the ratios and maximum distance?

4. *Part-time labor.* Should field work performed for substantially less than 8 hours during a single day be exempt from the requirements for toilet and handwashing facilities? If so, what number of hours (including travel and time to and from the field) is the appropriate cutoff point?

5. *Alternative forms of compliance.* Should the employer be allowed to provide prepackaged moist towelettes or equivalent materials in place of handwashing water? OSHA specifically solicits information on the adequacy of alternatives to soap and water in reducing exposure to both pesticides and pathogenic organisms.

6. *Necessity.* Do existing state field sanitation laws and regulations provide effective worker protection? How effective has the voluntary provision of field sanitation facilities been? What is the impact of such statutory and voluntary measures on the need for a federal occupational safety and health standard?

III Background

On April 27, 1976, OSHA published a notice in the Federal Register (41 FR 17576, ex. 11-011) proposing a field sanitation standard. That notice of proposed rulemaking is hereby withdrawn and replaced with this proposal.

The 1976 proposal was based substantially upon the recommendations of SACA and existing standards in California and New Jersey. It required potable drinking water, handwashing facilities, toilet facilities, and where food was prepared, sanitary preparation facilities. Specifically, toilet and handwashing facilities were to be made available to employees in a ratio of one facility for every forty workers or fraction thereof and to be located within a five minute walk of the workplace. If five or fewer employees were in the work group, however, the facilities were not required to be physically located in the field as long as they were easily accessible by readily available transportation. If employees were in the field for two hours or less on any day, toilet and handwashing facilities were not required.

The notice (41 FR 17576, ex. 11-011) requested comments and information on issues relating to the proposed standard. A total of 1113 comments were received and reviewed by OSHA. Approximately 70 percent of the comments received were opposed to the proposed 1976 standard. Of the total written comments submitted a substantial number of comments (about 230) addressed significant and relevant issues.

Thereafter, in the face of other priorities, development of the standard was discontinued. In order to settle pending litigation,OSHA resumed work on the standard in 1982. On March 1, 1983, OSHA published an Advance Notice of Proposed Rulemaking (ANPR) informing the public and interested parties that OSHA was considering developing a new field sanitation standard and soliciting relevant data and comment (48 FR 8493, ex. 11-012). Of the 448 public comments received in response to that ANPR, 67 percent supported the adoption of a field sanitation standard. A sizable portion of those supporting promulgation of a standard were farm workers, augmented by representatives of church organizations, the medical community, state and federal government agencies, migrant advocate groups (including legal counsel), social service organizations, members of the academic community and members of Congress. Of the remaining 33 percent, most commenters questioned the need and anticipated impact of such a regulation. Many of them, nonetheless, commented on provisions for a field sanitation standard. A sizable portion of those opposed were small Kentucky farm operators, employing mostly family members, who expressed concern that such a field sanitation standard would apply to them. Other groups with reservations and/or opposing the standard consisted mainly of small farm operators, loggers and various agricultural trade associations.

IV. Health Effects

A. Health Issue

The major issues to be addressed by this proposed standard are related to public health. The basis public health concept upon which this proposal is based is that poor sanitation increases the incidence of disease. This concept has been well understood and universally accepted for over 100 years (e.g., Snow, J. S., "On the Mode of Transmission of Cholera," 1854, ex. 11-060; Feachem, Richard G., et al., *Sanitation and Disease: Health Aspects of Excreta and Wastewater Management,* World Bank Studies in Water Supply and Sanitation, 1983, ex. 11-010). Diarrheal diseases, for example, have long been known to be associated with unsanitary conditions (ex. 11-037; 11-039; 11-040; 11-041; 11-053; 11-061). Recognition of the relationship between filth and disease led to some of the most important actions for protection of health ever taken by mankind. The nineteenth century sanitary revolution transformed the pattern of disease in industrial nations. For example, substantial reductions in mortality from gastrointestinal diseases have resulted from improvements in the quality of water supplies and environmental sanitation (ex. 11-002).

One way to prevent the spread of infectious disease is to interrupt the chain of transmission from one person to another by preventing the ingestion and penetration of harmful organisms by proper disposal of waste. History has repeatedly shown this method to be effective, the least disruptive to society, and the least costly over time (ex. 11-002, 11-029). Further documentation of the success of simple public health measures in the control of communicable diseases can be found in the scientific literature cited here and in the March 1981 National Institute for Occupational Safety and Health (NIOSH) Report to OSHA on Field Sanitation (ex. 2-428). Because of what is known about poor sanitation and the mechanism of transmission of communicable diseases, it is reasonable to expect that exposure to unsanitary conditions in the agricultural field workplace would also increase the incidence of disease among farm workers. Documentation of unsanitary conditions in the U.S. farm workers. Documentation of unsanitary conditions in the U.S. agricultural workplace began to appear in the reports of state and federal public health officers after 1950 (e.g., ex. 11-026).

During 1962-3 the Senate Subcommittee on Migratory Labor (SSML) of the 87th and 88th Congresses, investigated reports that sanitation facilities for farm workers were inadequate, unhealthy, and unsafe where migrant farm workers lived and where they worked at that time. Their findings in 1963 (ex. 11-026, 11-030) presented evidence that: (1) Unhealthy, unsafe sanitation conditions prevail where migrant farm workers live, and in the fields where they work (ex. 11-030,

p. 3); (2) acute diarrheal diseases are a major cause of death, especially for the young, in most countries of the world (ex. 11–026; p. 905), (3) most acute diarrheal disease can be easily controlled by the maintenance of a sanitary environment (ex. 11–030, p. 3); (4) provision of sanitation facilities, especially water, tends to decrease the prevalence of Shigella (an index of infection risk) (ex. 11–026, p. 905); and (5) since sanitary facilities tend to improve personal hygiene, provision of such facilities will result in an additional decrease in the incidence of infectious enteric (intestinal) disease (ex. 11–026, p. 937).

The Senate Subcommittee also examined two important characteristics of the relationship between inadequate sanitation facilities for farm workers and intestinal disease: the relative significance of sanitation facilities compared to other socio-economic factors for disease incidence, and the risk of disease to other populations arising from poor sanitation for farm workers. As to the first, the report found that the provision of adequate sanitation facilities had greater effect in lessening diarrheal disease than the combined effect of improving all of farm workers' other socio-economic factors. As to the second, the report found that the risk of disease due to inadequate sanitation for field workers extended well beyond those workers. Fringe residents and employees in other workplaces near contaminated fields are also at risk because of the potential for Shigella transmission by flies.

Summarizing the main findings of the Senate Subcommittee, then Secretary of Health, Education, and Welfare, Anthony J. Celebreeze, in a letter to Senator Lister Hill, wrote:

> We * * * recognize the need for * * * improvement of sanitation facilities for the use of * * * (farm) workers. The association between poor sanitation and disease incidence has been repeatedly demonstrated. Moreover, we are well aware of the prevalence of poor sanitary conditions in the places where farm laborers live and work (ex. 11–030, p. 7–9).

Based on such evidence, the American National Standards Institute (ANSI) soon thereafter adopted a standard providing for sanitation facilities in the temporary labor camps where migrants live (ANSI, Z4.4–1968, Minimum Requirements for Sanitation in Temporary Labor Camps). This standard was adopted after 1970 as an OSHA regulation under the OSH Act.

B. Health Hazards in the Agricultural Field

Adverse effects on the health of agricultural workers may result from: (a) Exposure to drinking water that is contaminated with disease-causing organisms or hazardous chemical substances such as pesticides; (b) insufficient potable water to prevent dehydration, heat exhaustion, heat stroke, or other illnesses related to exposure to hot environment; (c) insufficient washing water to prevent or reduce fecal-oral transmission of disease-causing organisms and to prevent or reduce pesticide exposure and absorption through the skin; (d) inadequate toilet facilities, leading to employee defecation or urination in fields with resulting employee exposure to disease causing organisms in urine and feces; and (e) urine retention over long work days causing possible physical harm and increased disease risk.

The risk of these adverse effects is augmented by a variety of factors. The larger the number of workers employed in hand labor operations without adequate toilet facilities, the greater will be the risk of communicable disease because of the greater likelihood of employee exposure to disease-causing organisms carried in urine and feces deposited in the field. Agricultural workers subject to nutritional deficiencies may have increased susceptibility or reduced resistance to disease (ex. 11–002, 11–027). Similarly, where workers are employed in hand labor operations in fields sprayed with pesticides, exposure to toxic chemicals is likely to be higher than for workers engaged in non-hand labor operations because of increased contact with sprayed plants. Inadequate quantities of drinking water may put agricultural workers at increased risk of disease because of the body's reduced ability to handle an increased toxic load from exposure to agricultural chemicals (ex. 11–027).

1. *Heat-Related Illness:* The potential effects of inadequate drinking water during physical exertion in agricultural hand labor under hot and often humid weather conditions include a variety of heat related illnesses. The most serious of these is heat stroke, which can be fatal. Heat cramps and heat exhaustion, which are less serious but nevertheless debilitating, can also occur. An ample and readily available supply of drinking water largely prevents heat stroke, heat cramps and heat exhaustion. Water deprivation under agricultural working conditions may produce cumulative or delayed adverse effects on the renal, cardiovascular, other body systems (ex. 2–382).

Dehydration, which reduces the body's capacity to dissipate heat by perspiration, is the primary cause of heat-related illness, especially heat exhaustion and heat cramps. Death can result if dehydration is severe. If proper tissue hydration is to be maintained and bodily functions are to continue, lost water must be replaced. Prior or concurrent replacement of anticipated sweat losses can prevent dehydration. Estimates of water requirements for persons engaged in moderate work in the summer in temperate regions range from 6 to 10 quarts per person, per day, depending on temperature, humidity, number of hours worked, and amount of activity in direct sunlight (ex. 11–063, 11–064).

Evidence in the record indicates that water often is unavailable to workers in the field (ex. 4; ex. 2–291, 2–301, 11–004), and when available, is often inadequate in amount or is not potable (ex. 2–371, ex. 2–291; ex. 4; 2–398). In other cases, alcoholic beverages are reported to be more readily available than water (ex. 2–371), which can further complicate health problems since alcohol exerts a diuretic effect, thereby enhancing dehydration (ex. 11–028).

Little quantitative data are available to estimate the prevalence of heat-related illness among agricultural workers. The primary reason for the lack of data is that most instances of heat-related illness are not seen by medical personnel and when seen, are not reported or tabulated (ex. 11–028). There have, however, been some documented cases of heat-related illness (ex. 2–372) and death due to heat stroke among agricultural field employees (ex. 11–028).

2. *Communicable Diseases:* Testimony of agricultural workers and health professionals under oath in court proceedings (D.D.C. Civ. Action No. 2142–73, ex. 4, 5, 6) and in comments (e.g., ex. 2–99, 2–101, 2–291, 2–371) received by OSHA indicates that toilets and handwashing facilities are frequently absent from the agricultural workplace. Results of a study conducted by researchers from the University of Wisconsin indicate that fewer than half of the agricultural employees interviewed were provided with drinking water, handwashing facilities or toilet facilities at their field workplaces (ex. 11–004).

Where toilet facilities are not reasonably accessible for use by agricultural employees at work in the field, employees have been forced to

defecate and urinate in the fields (ex. 2-291, 2-302, 2-307, 2-309, 2-388). Soils, plants, food crops, and surface water are thus contaminated with human excreta. These human wastes become a vehicle for the transmission of disease-causing organisms, including bacteria, viruses and parasites, to other agricultural employees working in the fields and to consumers of the food products being grown.

The transmission of communicable diseases caused by these pathogenic organisms has long been known to be related to the improper disposal of human wastes. It is also well known that the chain of transmission of disease-causing organisms can be interrupted by the proper disposal of human wastes and the maintenance of simple hygienic practices. The proper disposal of human wastes can be achieved by the provision and use of properly maintained, reasonably accessible toilet facilities. Simple hygienic practices include washing one's hands after using the toilet and before eating to reduce the possibility of disease transmission by the fecal-oral route. This necessitates that facilities for handwashing be made accessible to field workers.

Evidence suggests that unsanitary living conditions, particularly in temporary labor camps, also are associated with higher disease rates among farm laborers (ex. 11-052). On the basis of data available, therefore, it may not be possible to isolate the adverse effects of inadequate sanitation in the field from the adverse effects of inadequate sanitation in the living quarters. However, OSHA presently has a standard requiring proper sanitation in temporary labor camps (29 CFR 1910.142). To the extent that employers are in compliance with that standard, the relevant sources of disease in temporary labor camps should be effectively controlled.

The potential adverse health effects related to the improper containment and treatment of human wastes include diarrheal diseases such as amebiasis, giardiasis, shigellosis and salmonellosis; viral disease such as hepatitis; and parasitic diseases caused by Trichuris (whipworm), Necatur (hookworm), Ascaris (roundworm), Strongyloides (Nematode worm) and other organisms. Most of these pathogenic organisms are transmitted from person to person by the fecal-oral route: the hands during the course of the workday come into contact with fecal material on plants or soil contaminated by indiscriminate defecation and subsequently transmit the organisms to the mouth during smoking or eating. Some parasites such as Strongyloides and Necatur may penetrate the skin of hands and feet exposed to fecal-contaminated soil and pass into the bloodstream of the worker (ex. 5, ex. 11-005, ex. 11-054).

Adverse health effects in farm employees have been reported. Ortiz (ex. 11-031), has reported a prevalence rate (35.5 percent) of parasitosis in Puerto Rican farm workers residing and working in Western Massachusetts nearly double that reported for Puerto Rican populations residing in U.S. mainland cities. In explaining the higher disease rate among these farm workers, Ortiz suggested a higher degree of exposure to pathogens, and that sanitation facilities may not be available to farm workers. Ortiz observed that these facilities, where they exist, usually are located a long distance from the fields. Similarly, in comments submitted to the record (ex. 2-374) investigators at The Johns Hopkins University reported that of 290 stool specimens from migrant farm workers in the Delmarva peninsula, 48 percent contained parasites of which 43 percent were pathogenic. This compares with an estimated prevalence of parasites in the general U.S. population of only 2 or 3 percent. Likewise, results of a survey by the Colorado Department of Health of 15 Colorado primary health care providers indicated that farm workers were treated more frequently than non-farm worker patients for parasitic and bacterial disease conditions (ex. 2-372).

3. Urinary Tract Infections: Agricultural field workers have reported that when they work in fields where no toilets are available, some employees (especially women, for reasons of modesty) attempt to forego urination for several hours or throughout the day, if possible (D.D.C. Civ. Action No. 2142-73, ex. 4; ex. 2-291). The association between urine retention and increased risk of urinary tract infections in women, while not well established, has been suggested by published clinical and epidemiological studies (ex. 11-083, 11-041, 11-043). Moreover, in comments and testimony in the record (ex. 5, 2-253, 2-318) physicians have expressed their opinion that this association is well founded. However, Colorado clinic physicians responding to a survey were not able to support this association (ex. 2-272).

Urinary tract infections (UTI) are common in the general population, but appear to be more prevalent among females than males, who rarely develop symptomatic UTI until after the age of 45. The difference between sexes in prevalence or susceptibility is believed to be related to two factors: Anatomical variations that result in greater vulnerability of the female urinary tract to invasion by pathogenic organisms; and greater urine retention by women for cultural or social reasons (ex. 11-041). In a recent study, Lapides (ex. 11-042) found that the vast majority of patients with recurrent UTI either possessed a bladder with a capacity larger than normal and/or had a history of infrequent urination, once in every 5-10 hours. The enlarged bladder was said to be related to voluntary urine retention.

In another study, Adatto et al. (ex. 11-043) compared female students with a history of recurrent UTI with a control group and found a highly significant difference in regular voluntary deferral of urination between the groups. Sixty-one percent of the women with a history of UTI regularly deferred urination for periods from one to greater than 6 hours, compared with 11 percent of controls. Moreover, a behavioral regimen emphasizing regular, complete bladder emptying was shown to be effective in preventing reinfection in this group of women.

OSHA seeks comments on the potential association of urinary tract infection with urine retention.

4. Pesticides: Pesticides of various types are commonly used on virtually all labor-intensive crops in the United States. Among agricultural field workers, dermal contact with pesticides has been shown to be the primary route of exposure. The most widespread effect of this contact with pesticide residues is though to be skin damage. Absorption of pesticides through the skin also is annually responsible for a large number of systemic poisonings. The national incidence rate of pesticide poisoning requiring hospitalization among farmers and agricultural workers was estimated to be 11.4 cases/100,000 workers in 1973 (ex. 11-050). The true incidence of pesticide poisoning is likely to be much higher, however, because only the severest cases are hospitalized.

Pesticide exposure of agricultural field workers has been demonstrated by a study conducted in Colorado. Chase et al. (ex. 11-055) determined that the serum levels of four pesticides in adult farm workers were significantly greater than in controls from non-agricultural occupations. In comments from the Colorado Department of Health (ex. 2-372) it was reported that 20 farm workers has been treated during the year for acute pesticide poisoning.

Human exposure to pesticides used by farmers to control pests and to increase

crop production can occur during application, initial re-entry to treated fields, and during crop management and harvest operations. The environmental impact and human health effects of pesticide application and field re-entry problems have long been regulated by the Environmental Protection Agency (EPA) and will not be addressed here. See the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of 1970, 7 U.S.C. 135 et seq. (1970) as amended by the Federal Environmental Pesticide Control Act (FEPCA), 7 U.S.C.A. 136 et seq. (Supp. 1973). OSHA is not proposing regulation of the application or use of pesticides. Rather, OSHA in this notice proposes to protect employees in the field after pesticide sprays have dried and dusts have settled by requiring handwashing facilities, which will reduce any harm to workers for contact with toxic pesticide residues on plants.

Residues usually accumulate on leaves and fruits of plants with large leaf surfaces (ex. 11–047) such as citrus fruits, peaches, grapes and tobacco, but are not limited to these crops. Exposures to pesticides very depending upon the task performed by the field worker and the remaining toxicity of the pesticide residue. For example, in order to cut a cluster of grapes, or pick an orange or peach, it is usually necessary to penetrate the leaf curtain. The worker, reaching for fruit among the leaves of the plant, may be subjected to higher exposures through dermal absorption than cultivators or pickers of, say, celery.

Weather also influences the residual toxicity of plant residues. Hot, clear days can decrease the toxicity of the applied pesticide through chemicial degradation in sunlight. Rain also may dilute the hazard and wash the residue into the soil to decrease worker exposure. However, some toxic pesticide residues, such as the widely used azinphos-methyl, may persist for weeks after application and produce symptoms from exposure (ex. 11–047). Exposure to pesticide residues necessitates efforts to remove the toxic substances from exposed areas of the body.

Although there is some disagreement about the effectiveness of washing hands, face and other skin surfaces with water to remove pesticides from skin, the majority of expert opinion appears to favor the use of water (ex. 11–033). Many manufactureres' labels on pesticide containers, EPA comments on the ANPR (ex. 2-403) and most relevant pesticide literature recommend the use of soap and water to treat acute pesticide exposure. Water washing dilutes and aids in the removal of excess residues that remain on the skin.

NIOSH (ex. 11.033) specifically recommend that:

(1) Employees who handle pesticides or equipment contaminated with pesticides shall be instructed to wash their face, hands, and forearms with soap or mild detergent and water before eating, drinking, smoking, or using toilet facilities.

(2) To prevent skin absorption of pesticides, employers shall instruct employees not to use organic solvents to clean their hands or other exposed areas of the body.

OSHA seeks public comment on whether dried pesticide residues on plants constitute a significant hazard to field workers. In light of EPA regulation of the use and application of pesticides, OSHA also seeks comment on whether it has the authority to protect field workers from pesticides and if it does, whether handwashing facilities should be required to reduce the harm to field workers from such a hazard.

C. Availability of Data on Disease Prevalence

The quantitative assessment of the potential health risks due to inadequate sanitation in agricultural field work situations is difficult because traditional sources of data on disease prevalence are rare or nonexistent for agricultural field workers. During the history of this project, however, OSHA and interested parties did identify some sources of data that can be used to determine potential health risks.

In December 1980, the plaintiffs introduced testimony in the litigation to document the lack of sanitation facilities in agricultural field situations. Expert testimony was presented on behalf of the proposition that significant risk of illness exists for any group of individuals exposed to inadequate sanitation and that farm workers would be as susceptible to disease producing organisms as other employees. Additional expert testimony stated that data may be available from the records of rural health clinics (D.D.C. Civ. Action No. 2142–73 ex. 4, 5, 6).

At the request of OSHA, NIOSH prepared a report on the need for a standard for field sanitation and submitted it to OHSA in April 1981 (ex. 2–428). In its general remarks, NIOSH stated that the relationship between poor sanitation and disease is well known. NIOSH further stated that on the basis of the literature reviewed and the fact that the spread of communicable disease causing agents may not be limited to the field workplace, the issues require consideration from an overall public health viewpoint. NIOSH concluded that quantitative date on disease prevalence among agricultural workers are not available, and more specifically, that no data appear to exist on rates of infection or incidence of heat overexposure among farm workers. Although no source of data on the adequacy of drinking water and sanitation facilities in fields was found by NIOSH, NIOSH asserted that a standard for field sanitation could be supported on the basis of good public health practice.

In the process of these efforts by OSHA to identify sources of data on disease prevalence, it has become evident that consistent data collection to determine the incidence or prevalence of any disease among farm workers is rare. Nationwide efforts have met with little success primarily due to the lack of reporting by health professionals to centralized agencies. The following may account for omissions in reporting: (1) The affected worker may not see a physician or other health professional; (2) if the affected worker does see a physician, quite often the diseases are difficult to diagnose and there is no opportunity for follow-up in order to resolve the initial diagnosis; (3) without a final diagnosis no report of the illness is made to a central authority or registry; (4) the reporting of many of the relevant diseases is not mandatory; (5) lack of reporting means that nationwide, statewide, or regional data are not collected for disease rates among farm workers; (6) little effort has been made to establish registries of disease among farm workers; and (7) reported illnesses are not categorized by occupation.

Because of the scarcity of epidemiological study results to document the incidence of disease among agricultural employees, and because of testimony and comments from health professionals indicating that data from medical records of migrant and rural health clinics might be useful, OSHA sought to determine what data there are and whether data from existing sources could be used to assess disease prevalence among agricultural workers. For this purpose, a preliminary survey of migrant health clinics was conducted by Centaur Associates, an OSHA contractor (ex. 11–028). The survey attempted to determine characteristics of the data base, if available data are comparable and usable, what questions are answerable with such data, if available data can be used to represent disease prevalence among farm workers, and whether data available might be used to support a

quantified assessment of health risks associated with inadequate sanitation in agricultural field work.

On the basis of a review of the scientific literature and a survey of health officials at migrant health clinics in ten regions, Centaur Associates concluded that no medical or exposure records or data sets are available which could be used to determine disease prevalence among agricultural workers related to the availability of toilets, drinking water, and handwashing facilities in the agricultural field. Therefore, Centaur Associates concluded that for the specific agricultural employee population at risk, sufficient data do not currently exist to support a quantified risk assessment (ex. 11–028). However, OSHA solicits data from the public that can be used in conducting such a risk assessment.

D. Significance of Risk

OSHA is required under the OSH Act to make two threshold findings before it can issue a health standard under Section 6(b)(5) of the Act. In accordance with the U.S. Supreme Court's decision in the benzene case *(Industrial Union Department (I.U.D.), AFL–CIO v. American Petroleum Institute (A.P.I.),* 448 U.S. 601, 65 L. Ed. 2d 1010, 100 S. Ct. 2844 (1980)), OSHA may promulgate a standard only if it finds that it is at least more likely than not that the risk OSHA seeks to regulate is a "significant" one and that the change in practice contemplated in the issuance of a standard would reduce or eliminate that risk.

In considering what sorts of risks might be considered "significant," the Court said:

> Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal a reasonable person might well consider the risk significant and take the appropriate steps to decrease or eliminate it (*Id.* at 655).

The Court indicated that the determination of "significant risk" should be made on the basis of an analysis of the best available evidence. Where possible, the Court indicated, that determination should be based upon a quantitative risk assessment. However, the Court qualified the general requirement for quantitative risk assessments. Recognizing the uncertainties involved, the Court said,

> . . . the requirement that a "significant" risk be identified is not a mathematical straitjacket. It is OSHA's responsibility to determine, in the first instance, what it considers to be a "significant" risk (*Id.* at 655).

And it further pointed out that,

> OSHA is not required to support its finding that a significant risk exists with anything approaching scientific certainty * * *. Thus, so long as they are supported by a body of reputable scientific thought, the Agency is free to use conservative assumptions in interpreting the data * * *, risking error on the side of over-protection rather than under-protection (*Id.* at 656).

In fact, the Court noted, OSHA's "determination that a particular level of risk is 'significant' will be based largely on policy considerations" (*Id.* at 656).

Historically, the risks posed by the lack of sanitation have been very significant. Legal and other responses to poor sanitation are considered so crucial in reducing morbidity and mortality that the sanitary revolution of the 19th Century is still considered one of the great achievements in the history of public health (ex. 11–002). Indeed, Dr. John H. Knowles, in his treatise on health in the United States, concluded that fully one-quarter of the reduction in mortality rates between 1600 and 1900 is attributable to improvements in general sanitation that reduced air- and water-borne infection (ex. 11–032).

As widespread conditions in underdeveloped countries show, the passage of time has not changed the magnitude of the risk created by poor sanitation or altered the connection between poor sanitation and disease (e.g., ex., 11–010, 11–036). Studies here and abroad have conclusively proven that poor sanitation creates great increases in the incidence of disease (ex. 11–036). Likewise, farm workers in the United States repeatedly report that they and their families are deprived of adequate sanitation in the fields and are subjected to continuing and recurrent diseases (e.g., exhibits. summarized in Comments in the ANPR and Health Effects Sections). Ortiz' study (ex. 11–031) suggests that excess risk may be high. Ortiz reported a nearly two-fold higher prevalence rate of parasitosis among Puerto Rican farm workers in Western Massachusetts compared to Puerto Rican residents of U.S. mainland cities.

Such studies, however, are rare because of the seasonal and migratory nature of the workforce, the nature of the relevant adverse health effects, and the socio-economic condition of many migrant workers. Thus, it is nearly impossible to obtain quantifiable scientific data for the U.S. on the extent of risk attributable to the lack of adequate sanitation facilities in the fields. As recounted above, OSHA and other agencies have tried, without much success, to obtain such data.

Quantification of risk cannot be achieved for every hazard. The four-judge plurality, speaking for the Court in the benzene decision, understood this limitation and did not intend to require OSHA to do what cannot be done. The concurring opinion of Mr. Justice Powell and the dissenting opinion of Mr. Justice Marshall, speaking for four members of the Court, confirmed this. Mr. Justice Powell stated:

> The statutory preference for the "best available evidence, "* * * implies that OSHA must use the best known techniques for the accurate estimation of risks and benefits when such techniques are available. But neither the statute nor the legislative history suggests that OSHA's hands are tied when reasonable quantification cannot be accomplished by any known methods * * *. In this litigation, OSHA found that "it is impossible to precisely quantify the anticipated benefits * * *." If this finding is supported by substantial evidence, the statute does not prevent the Secretary from finding a significant health hazard on the basis of the weight of expert testimony and opinion. I do not understand the plurality to hold otherwise (*Id.* at 666–67).

Mr. Justice Marshall, in dissent, concluded, ". . . the Court appears will ing not to require quantification when it is not fairly possible" (*Id.* at 666–67).

In light of the benzene decision, OSHA will assess quantified data concerning risk to the extent that such data are available. OSHA solicits expert testimony from interested persons. Such testimony will be an important element in OSHA's decision on whether to promulgate a final standard. Where first-hand evidence of significant risk is inadequate and where quantification cannot be accomplished, qualitative evidence and expert testimony would become the "best available evidence" and, if of sufficient weight, would satisfy OSHA's burden of presenting substantial evidence.

To assist in this effort, OSHA asks for quantifiable and other data concerning the significance of risk due to the absence of adequate field sanitation facilities and concerning whether the proposed field sanitation standard would reduce or eliminate that risk. OSHA also seeks comment on the studies cited in this preamble as well as on all other issues relating to significant risk.

V. The Regulatory Environment

A. State Regulation

Employers in all states hire temporary farm labor. Twelve states presently require employers to provide sanitation

facilities in the workplace for field workers. Some commenters (e.g., ex. 2-404) have suggested that the existence of these state standards makes the development of a federal standard unnecessary. Additional comment on this issue is solicited.

Three of the states, Texas, California, and Florida, have large populations of temporary farm labor throughout the year. The other nine states lie on the seasonal migratory routes. On the basis of the population-at-risk, Centaur Associates (11-028, p. 192) estimates that California and Florida, two states with their own field sanitation regulations, have 53 percent or 155,000 or 292,000 person-years of the affected population. State regulations vary in requirements (ex. 11-035, 11-072, 11-073, 11-074, 11-075, 11-076, 11-077, 11-078, 11-079, 11-080, 11-081). The major elements in these standards are compared in *Table I.*

TABLE I.—A COMPARISON OF STATE FIELD SANITATION REGULATIONS

State	Toilet facilities		Handwashing facilities		Maximum time/distance to facilities	Drinking water required [5]	Minimum number of workers for coverage
	Required	Ratio: facility/number of workers	Required	Moist towelettes allowed as substitute for water			
California (Food)	Yes	1/40	Yes	No	Within 5 min. walk or closest vehicular access.	Yes	5.
(Nonfood crops)	Yes	Various ratios [1]	No	N/A	Within 200 ft (61m)—For non-food crops.	Yes	1.
Colorado [4]	Yes	1/10	Yes	Yes	Within ¼ mile (402m)	Yes	No minimum.
Connecticut	Yes	1/20 male 1/10 female.	Yes	No	"Readily Accessible"	Yes	1.
Florida	Yes	1/40	Yes	Yes	If <10 workers, "available" if > 9 workers, "at location".	Yes	1 (water) 10 (other facilities).
Idaho	Yes	1/40	No	N/A	Within ¼ mile (402m) or closest vehicular access.	No	8.
Illinois	Yes	1/35	Yes	Yes	Within ⅛ mile (200m); if <10 workers, one-half mile (805m) or 5 min.	Yes	10.
New Jersey	Yes	Suitable number	Yes	Yes	Not more than 5 min. walk	Yes	6.
New York	No	N/A	No	N/A	"Reasonably Accessible"	Yes	5.
North Carolina	No	N/A	Yes	Yes	For drinking water, 200 yds. (183m); for handwashing (if requested) at point of customarily used access "Readily Accessible".	Yes	11.
Oregon	Yes	1/40, 1/25 if 5 or more hrs. worked/day.	Yes	Yes	"Readily Accessible"	Yes	No minimum.
Pennsylvania	Yes	Various [2] ratios	Yes	Yes	"Reasonable distance"	Yes	No minimum.
Texas	Yes	1/30	Yes	No [3]	Within unimpeded walk of 440 yd, or 400 m, or one-fourth mile.	Yes	7.

[1] Ratio: from one toilet/15 workers (1 toilet/each gender) to 6 toilets/150 workers, and toilet/each gender.
[2] Ratio from one toilet/10 workers within 1000 feet of worksite to one additional toilet for 11-15 workers within 500 feet of worksite.
[3] Except on temporary basis. N/A means not applicable.
[4] Standard for the provision of field sanitation facilities excludes those employees not housed in temporary labor camps.
[5] Minnesota requires employers of corn detasselers to provide an easily accessible supply of potable water for field employees.

Thus, eleven of the twelve state regulations require a supply of potable water; Idaho does not. Ten require toilet facilities; New York and North Carolina do not. California (for non-food crops), Idaho, and New York do not require handwashing facilities.

Coverage also varies among the states. Exclusions from coverage are based on both the small size of work crews and on the low number of hours worked on a specific day at an individual workplace. Exclusions based on the number of workers employed per day at a given worksite vary from none (Oregon, Colorado and Pennsylvania) to an exclusion for eleven or fewer employees (North Carolina). Exclusions based on the number of hours worked each day vary from 2 to 5 hours of work (Texas, Illinois, and California).

Thus, given the differences in regulation from state to state, protection of the migrant farm worker who travels across jurisdictions varies. In states without standards, some water and other sanitation facilities appear to be available to workers in the field. However, commenters indicate the availabilitiy of facilities in non-regulated jurisdictions is uneven (e.g., ex. 11-004, 2-302, 2-303, 2-307). Under these circumstances, the migrant worker may contract and transmit communicable diseases to members of work crews and other contacts along the migratory stream. As a consequence, the opportunity for transmission of occupational disease exists (See health effects section). A uniform federal standard like this proposal, by requiring all of the basic sanitation facilities in all states, might contribute to the more effective control of communicable disease. On the other hand, the existence of standards in twelve states, coupled with employer voluntary action in the other states, may make a federal standard unnecessary. Data contrasting the health status of field laborers on a state by state basis is solicited. OSHA is interested in receiving comments on voluntary action by employers in states without standards, the effect of state standards, and the potential effectiveness of and necessity for this proposal.

B. Federal Regulation

Established federal standards and national consensus standards for sanitation in existence before 1970 were adopted under the Occupational Safety and Health Act of 1970 for general industry (29 CFR 1910.141), for temporary labor camps (29 CFR 1910.142), construction (29 CFR 1926.51), shipyard employment (29 CFR 1915.97) and longshoring (29 CFR 1918.94). A recently promulgated standard for marine terminals (29 CFR 1917.127) also requires the employer to provide potabl water, toilets and handwashing facilities. Provisions for sanitation facilities, however, were not included i the safety and health regulations to protect agricultural employees (29 CFR Part 1928). Consequently, at the presen

time, agricultural workers remain the only occupational group for which sanitation facilities at the worksite are not required by federal law. Other occupational groups such as oil field and construction workers, who share many common working conditions with farm workers like isolated worksites, exposure to adverse climates, and hard, physical, hand labor, are covered by OSHA sanitation standards.

Congress also has passed a variety of federal laws, such as the Migrant Health Act (Pub. L. 87-692), the Fair Labor Standards Act (29 U.S.C. 201 et seq.), the Farm Labor Contractor Registration Act (7 U.S.C. 2041-2053), and the Migrant and Seasonal Agricultural Worker Protection Act of 1982 (29 U.S.C. 1801) addressing other farm labor problems. None of these laws address the public health concerns related to field sanitation.

VI. Summary of Comments in Response to ANPR

To assist in developing this proposal OSHA published an ANPR on March 1, 1983. Approximately 450 comments were received in response to the ANPR, two-thirds of which supported promulgation of a field sanitation standard. Those favoring a standard asserted the rights of farm employees to equal protection and the need to protect farm workers in terms of fundamental public health principles. NIOSH, in its response to the ANPR (ex. 2-428), stressed the need for equalization of farm workers' working conditions with other occupational groups. The American Medical Association (ex. 2-438) pointed out that farm workers remain the only segment of the American working population unprotected by an OSHA requirement for sanitation on the job.

In their responses, many agricultural employers and local farm bureaus supported the position taken by the American Farm Bureau Federation (AFB) (ex. 2-63). In its written statement, the AFB indicated that a field sanitation standard must be based on "proof of need." In the event a regulation is adopted, the AFB strongly favored a performance-type standard that would exempt small family farmers and farm employers in states already enforcing their own sanitation codes. Need has been identified as a major issue in this rulemaking.

The principal issues addressed in the comments follow.

A. Scope

In discussing the issue of scope, a number of commenters favored universal coverage (e.g., 2-371, 2-402). Nonetheless, among those advocating a broad regulation, many recognized the need to exempt solitary workers (e.g., ex. 2-99, 2-101), very small crews (4 to 10) (e.g., ex. 2-397, 2-415) or employees working for short periods of time (2 to 3 hours) (ex. 2-303, 2-307, 2-308). Most indicated that the need for protection is greatest where there are "large" crews engaged in hand labor in the field (e.g., ex. 2-415, 2-80). Additional exemptions were suggested where there are fewer than a specified number of person-days worked annually (e.g., ex. 2-80), where workers have their own transportation, or where crews mechanically harvest crops (e.g., ex. 2-75).

B. Performance vs. Specification

Several commenters suggested that a performance standard is needed due to variations in agricultural terrain, crop type and climate (e.g., ex. 2-80, 2-323, 2-415, 2-63, 2-215, 2-252). Others believed, however, that requiring only "accessible" and "adequate" facilities would be too vague to be enforceable or to provide employers with a clear understanding of what would be required (ex. 2-80, 2-208, 2-298, 2-371). Several recommended, for example, that a specific time/distance maximum between facilities and employees should be provided (ex. 2-80, 2-99, 2-101, 2-373).

C. Existing Workplace Conditions

The AFB (ex. 2-63) and other farm operators, report that on most large farms (more than 500 acres) all field sanitation facilities that a regulation might reasonably require are already provided. Smaller operations, they further state, primarily involve work areas located close enough to permanent facilities to ensure accessibility. These farm operators also indicate they have no knowledge of any unusual health problems among farm workers due to a lack of field sanitation facilities (ex. 2-63). A number of commenters report that many farm workers carry their own drinking water to work in the fields (e.g., ex. 2-214, 2-323, 2-75, 2-291).

By contrast, accounts from farm workers and farm worker advocates from most parts of the country suggest that sanitation facilities are rarely present in the fields; when they do exist, facilities are said often to be poorly maintained and workers who use the facilities are reported to be discriminated against (ex. 2-291, 2-337, 2-400, 2-414, 2-99, 2-301). The existence of widespread and varied medical problems among farm workers such as skin rashes, upper respiratory tract infections, urinary tract infections, abdominal pain, infectious diseases, and heat stress were reported in areas where sanitation facilities were absent from field work environments (ex. 2-13, 2-253, 2-309, 2-315, 2-316, 2-317, 2-372, 2-374, 2-386, 2-389, 2-400). Several of the studies and reports of personal experience submitted indicate that farm workers are substantially more vulnerable to these diseases than the rest of the population as a result of their lowered resistance, which is directly attributable to both poor working and living conditions.

One commenter, Migrant Legal Action Program of Georgia (ex. 2-302) notes that most states along the migrant stream do not have field sanitation standards. Moreover, in states having such regulations, coverage and enforcement is alleged to vary widely. Therefore, healthy workers, may leave one state that enforces sanitation requirements only to face problems of inadequate sanitation in the next state along the migrant stream.

The prevalence of pesticide residues in the field was of particular concern to farm workers and their supporters (ex. 2-337, 2-388, 2-37, 2-318). Medical problems ranging in severity from skin rashes to acute poisonings were attributed to pesticide exposure in the absence of adequate amounts of soap and water to flush skin and water to flush the eyes (e.g., ex. 2-374, 2-403).

D. Toilet Facilities

Most of those responding agreed that toilet facilities in the field should be required, at least in the absence of "reasonable access" to permanent facilities (by foot or auto transport). The compelling need for privacy and fundamental public health principles were cited as bases for this need (ex. 2-253, 2-291, 2-326, 2-379, and 2-388).

Concerning the appropriate location for such facilities, some commenters suggested a specific maximum distance/time, such as a quarter mile or a 10 minute walk (or ride) from the worksite (ex. 2-244, 2-101); others suggested simply requiring "reasonable access" would be sufficient (ex. 2-63, 2-252). Many agreed that the standard should permit portable toilets, which, along with handwashing and potable drinking water, might be truck-mounted for ease of transport and access (ex. 2-63, 2-99, 2-101, 2-291). Where terrain presented a problem, a requirement for "closest vehicular access" was considered acceptable language (e.g., ex. 2-23, 2-31). A number of commenters emphasized the need to require full shift availability of sanitation facilities, adequate provision of toilet paper, inside locks on doors and good

maintenance (e.g., ex. 2-208, 2-308, 2-80). It was further suggested that good maintenance is important because poorly maintained facilities would be worse than none at all (ex. 2-101, 2-208).

Some commenters suggested that a specific ratio of toilets to workers (or users) should be written into the standard. Suggestions for specific ratios ranged from 1 to 15 (e.g., ex. 2-208) to the AFB's preference for 1 to 40. A few commenters favored separate toilets for males and females (ex. 2-244, 2-373, 2-404, 2-291).

E. Handwashing Facilities

Farm workers and their advocates with direct experience of knowledge of agricultural field conditions generally state that handwashing facilities are infrequently provided to farm workers in the fields (ex. 2-99, 2-101, 2-291, 2-398). Because of the lack of handwashing facilities, the Farm Labor Research Organization (ex. 2-291) reports that workers often are forced to wash their hands with squashed fruits and vegetables e.g. oranges and tomatoes when facilities are not available. Most agree that handwashing facilities are needed (e.g., 2-214, 2-253, 2-318). The American Medical Association (AMA) (ex. 2-438) states that handwashing facilities would help reduce the transmission of disease through the oral-fecal route. Moreover, public health would also be served more broadly because farm workers often handle products used for raw human consumption. Several commenters including the North Carolina Farm Bureau (ex. 2-262), believe that handwashing facilities are needed when toxic substances are being handled and/or when food is being consumed in the field, (e.g., ex. 2-371, 2-379, 2-388, 2-63).

Generally, growers and their representative organizations want any requirement for handwashing facilities to be performance-oriented and flexible as to method of compliance (ex. 2-63, 2-415). For them, portability would be essential. On the other hand, the Utah Department of Health (ex. 2-208) prefers a handwashing standard that specifically requires chlorinated water, soap, single-use towels and covered containers for their disposal, a minimum of 4 gallons of water per day per worker and a method for safe disposal of the water.

Several commenters, including the AFB, did not know whether towelettes could be safely substituted for soap and water (ex. 2-62). The EPA (ex. 2-403), however, states unequivocally that substantial amounts of water and soap are necessary for immediate flushing to avoid the harmful effects of exposure to pesticide residues, which could range from painful skin rashes to acute poisoning.

F. Drinking Water

Industry groups contend that drinking water is already adequately available to farm workers, so no federal requirement is necessary (ex. 2-63, 2-78, 2-116). Should drinking water be required, however, employer groups indicate they would oppose a requirement for the employer to provide ice to cool the water on the basis of unreasonable cost. A number of commenters oppose any specification of maximum water temperature because of varying climates and humidity (ex. 2-214, 2-244, 2-308, 2-415).

Those favoring a requirement for drinking water argue it frequently is not provided by employers or crew leaders (ex. 2-101, 2-291, 2-301), and when it is available, it often can only be purchased at an unreasonably high price. In some places, alcoholic beverages are easier to obtain (at a price) than drinking water (ex. 2-371, 2-391, 2-398). Others complain that, when provided, drinking water is stored in rusty or unsanitary containers and must be drunk from a common cup (ex. 2-388, 2-398, 2-414).

Farm workers, public health authorities and medical outreach workers comment that farm workers often work 10 to 16 hours a day in hot climates without access to potable drinking water in sufficient amounts. As a result, these commenters report that hepatitis, typhoid, heat stress and dehydration are common (ex. 2-371, 2-291, 2-243, 2-317). To correct these conditions, commenters advocate requiring water to be certified as potable by accepted health authorities, cooled to a reasonable temperature (especially in hot climates), and dispensed by single-use cups (ex. 2-208, 2-317).

VII. Discussion of Proposed Standards

The proposed standard requires that potable drinking water and adequate toilet and handwashing facilities be provided by the employer to agricultural field workers where 11 or more employees are engaged in hand labor operations in the field. In exempting small farming operations with ten or fewer employees, OSHA is responding to a Congressional appropriations bill (ex. 11-009). Furthermore, in limiting the scope of this proposal, OSHA directly responds to the central criticism made of the 1976 proposal. Commenters then generally believed that toilet and handwashing facilities are only needed in hand labor operations where large numbers of workers are present. In accordance with the 1976 comments, the proposal also extends the exemption from the originally proposed toilet and handwashing requirement for short work periods from 2 hours to 3 hours. The proposal also omits the 1976 proposed requirements for sanitary food preparation and signs.

The scope, basic requirements, rationale, and principal issues of the proposed standard are summarized below.

A. Scope

The proposed standard covers employees engaged in hand labor operations in the field outside of permanent structures when 11 or more such employees are working for an agricultural establishment on a given day. Small farms that do not hire more than 10 field laborers, thus, are exempt from the proposed standard. Family farms, employing only members of the immediate family of the farm employer (29 CFR 1975.4(b)(2)), are not covered. Similarly, if the agricultural establishment engages only in logging operations or livestock production, it also would not be under the proposed standard. Moreover, if the total amount of the fieldwork performed in a single day, including employer-provided travel to and from the field, is less than three (3) hours, the employer is exempt under paragraph (c)(2)(iv) from the obligation to provide toilet and handwashing facilities.

The scope of the proposed standard is limited to hand laborers in the field because they are the employees most in need of protection. Unlike tractor operators and cowboys, hand laborers in the field are relatively immobile, and unlike cannery workers they are generally isolated from sanitation facilities and engaged in strenuous work directly exposed to the harsh elements. The proposed standard also would exempt small farms with fewer than 11 field workers because of the appropriations rider (Pub. L. 98-139, ex. 11-009) and because it may be infeasible, and perhaps unnecessary, for very small farms to provide such facilities.

B. Definitions

Agricultural Employer: The term is defined very broadly in paragraph (b). It includes not only the owner and the operator of an agricultural establishment, but also those in whose interest the establishment is operated, as well as, those who effectively manage the establishment and those who act toward an employee in behalf or in the interest of the employer. The

inclusiveness of this definition reflects the varied and complex arrangements developed among owners, crew leaders, lessees and agribusinesses to manage field workers. It is justified because reports show that these arrangements historically have resulted in an evasion of responsibility for the health and safety of field workers at the worksite. By including all such parties within the definition of "employer," OSHA seeks to assure that employees obtain the protection required by the statute.

C. Potable Drinking Water

The proposed standard in paragraph (c)(1) requires that potable drinking water be provided by the employer "in sufficient amounts to meet employees' needs" at "readily accessible locations." It also requires that the water be "suitably cool" and that it be dispensed either in single-use drinking cups or by a water fountain (e.g., an angled jet outlet). OSHA has used performance language to define how much water needs to be provided, where it must be provided and at what temperature it must be provided to allow for the wide variation in temperature and humidity among the nation's agricultural establishments and for the resulting differences in employee needs. The water must be available as needed, and its temperature must not be so high as to discourage employees from drinking it. Some guidelines for drinking water in the workplace have been suggested (ex. 11-063, 11-081). OSHA solicits comments on cost-effective methods to provide "suitably cool" drinking water.

Public health standards prohibit the use of common cups or dippers to dispense potable drinking water and require fountains or single use cups for this purpose. The need for the sanitary dispensing of drinking water is also supported by a recent study of the transmission of aseptic meningitis among high school athletes who used common drinking water cups (ex. 11-056).

The basic need for potable drinking water is well established in the record and the literature. Whether the employer should be required by law to provide it is at issue here. Comments from agricultural workers and other eyewitnesses, summarized in the section on comments on the ANPR, indicate that potable drinking water in sufficient amounts often is unavailable at or near the workplace. Field labor inherently involves tasks that are physically demanding, especially under the adverse climatic conditions frequently experienced during the crop growing and harvesting seasons. As indicated above in the discussion of health hazards, the provision of potable drinking water would be expected to reduce substantially the incidence and severity of heat stress and the incidence of communicable disease (ex. 11-044). The obligation to provide potable water is placed on the employer in this proposal because the OSH Act places primary responsibility for employee health on the employer. In addition, it may be impractical for agricultural field workers to carry enouth water individually to protect their health. OSHA solicits comment on this issue.

D. Toilet and Handwashing Facilities

OSHA proposes in paragraph (c)(2) that toilet and handwashing facilities must be made available to field workers in a minimum ratio of one facility for each 20 employees or fraction thereof. Alternate ratios have been suggested, as well as alternative language requiring an "adequate number" of facilities. Of the 10 states requiring toilets, the ratio of toilets to the number of workers is specified in each case except New Jersey. Most state regulations then, indicate that a specified ratio is needed rather than performance language.

Concerning the exact ratio to be specified, the ratios in state standards range from one per ten to one per forty workers. Cal/OSHA has pointed out that its ratio (for food crops) of one per 40 workers is inadequate (ex. 2-352). For non-food crops, California requires an initial ratio of one facility for every 15 workers and also requires separate facilities for each sex. OSHA proposes one facility per 20 workers, regardless of gender, which should be adequate as long as toilet design and construction ensure privacy. This ratio is identical to that in the construction industry for crews of 20 or fewer employees. Since the number of female workers in the field (22 percent of population) is more than twice the 9 percent present in the construction workforce (see ex. 11-028, p. 8 and ex. 11-071, pp. 76 and 85), this proposal would for large crews require additional toilets instead of the additional urinals required in the construction standard. OSHA solicits additional information to determine whether one facility for 20 workers is appropriate.

The proposal allows the use of any type of properly designed toilet facility, fixed or portable. This will allow employers the flexibility of selecting a facility best suited to their particular situation. For example, if an employer has crews that work over relatively large areas, portable facilities mounted on a vehicle may be preferable. On the other hand, there may be situations where a fixed sanitary privy may be preferable. Since OSHA is not proposing to require separate facilities for each sex, all toilets must have doors capable of being latched from the inside to insure privacy.

OSHA is proposing that toilet and handwashing facilities be located within a maximum of one quarter mile (0.4 km.) of each employee's place of work in the field. Comments have suggested alternative language such as a "walking time maximum" or a performance approach, which might require that the facilities be "reasonably available." Of the ten states requiring toilets, six specify the maximum time/distance they may be located from each employees place of work. Most states, thus, feel a specified maximum, rather than performance language, is needed.

OSHA proposes that worers should not be expected to travel more than one quarter mile (0.4 m) to toilet facilities. If the facilities are located too far from the worksite or are inaccessible, then for a variety of reasons they are less likely to be used. As a result, the problems of potential disease transmission and potential urinary tract infections from urine retention, which the proposal is designed to reduce, would persist.

OSHA realizes that there are situations where, due to terrain, it is not possible to locate the facilities within one quarter mile of employees. In such cases, OSHA therefore proposes to allow their location to be at the point of closest vehicular access.

OSHA is proposing that where field work is for three hours or less in a day (including travel time to and from the field), toilet and handwashing facilities are not required. A similar exemption is common in most state regulations since there is little need for most workers to relieve themselves at the worksite when work is for very short time periods and when facilities presumably are available before and after work.

E. Maintenance

OSHA is also proposing maintenance requirements. OSHA proposes that the drinking water containers be cleaned and refilled each day. For toilet and handwashing facilities to prevent disease effectively, they must be cleaned and maintained. Performance language is used as the frequency of cleaning and maintenance may vary according to the size of the workforce and other factors. Proper disposal of waste from sanitation facilities is necessary for effective prevention of disease and maintenance of a sanitary environment. OSHA's use of performance language here acknowledges that the type of facilities

and their placement in or near the field will vary considerably.

VIII. Summary of Regulatory Impact and Regulatory Flexibility Assessment; Costs

In accordance wth a court approved settlement agreement *National Congress of Hispanic American Citizens* v. *Raymond J. Donovan*, No. 2142-73, July 16, 1982), OSHA has developed a proposed standard on field sanitation to address the risk of potential adverse health effects that may be experienced by 765,500 agricultural field workers due to inadequate or nonexistent field sanitation facilities.

Adequate basic sanitation and hygiene facilities for agricultural workers are absent in many parts of the U.S. One survey, conducted in the summer of 1982 in the Panhandle and South Plains of Texas (ex. 11-045) indicates that in one-half of the fields surveyed, agricultural workers did not have toilets or handwashing facilities. One-quarter of the fields inspected had toilet facilities but the ratio of workers to toilets was extremely high. In some cases toilets were not accessible, being two miles or more away from the workers in the field. Moreover, workers have been reported to be drinking water from rusty cans and discarded herbicide containers. In other cases, water supplies were exhausted before the end of the day. Finally, some crew leaders did not allow their workers to use toilet facilities when necessary.

Based upoon data from Centaur Associates, Inc. (ex. 11-028), OSHA estimates that the proposal would affect about 765,500 hired farm workers and about 67,000 farms that hire eleven or more farm workers (ex. 11-017). On an annual basis, these workers are employed for approximately 292,000 person-years, or about 96 workdays per employee. Approximately 53 percent of the national total population at risk or 155,000 person-years of employment are in California and Florida. OSHA's contractor is presently collecting additional baseline industry profile data to more accurately determine the characteristics of the affected workplaces and the population at risk. This data will be available during the public participation period. OSHA nevertheless seeks additional information about the population that would be affected by the proposed standard including the distribution of workers and farmers state by state.

Documentation of the adverse health effects currently experienced by agricultural employees working without the benefit of proper field sanitation facilities is hindered by two factors: (1) The difficulty in proving the worksite is the exclusive source of these health effects, and (2) the difficulty in quantifying the incidence of disease. Although these problems are not generically different from problems commonly associated with health risk determinations, they are much more severe in the case of farm workers. First, although the lack of sanitation facilities raises the incidence of communicable diseases, it is often impossible to isolate the agricultural field from other sources of disease (e.g., the home). Thus, it is difficult to assess with precision the degree of risk solely attributable to occupational sources. Second, data on agricultural field workers are fragmentary, unsystematic, and unreliable. In addition, development of a quantitative risk assessment of the health effects caused by inadequate field sanitation facilities is effectively precluded because of: (1) The migrant lifestyle of much of the agricultural worker population, (2) the nature of health care facilities available to them, (3) the lack of systematic reporting of the occurrence of disease, and (4) the lack of consistent and accurate diagnoses of disease. Nevertheless, public health information demonstrates that the risks posed by inadequate sanitation are clear and substantial.

This proposal requires adequate and sanitary toilet facilities to reduce the likelihood of employee defecation and urination in the fields. This will result in reduced employee exposure to disease-causing organisms found in human urine and feces. OSHA is also proposing that sufficient handwashing water be made available. As a result, a reduction in the fecal-oral transmission of disease-causing organisms and of pesticide exposure and absorption through the skin is anticipated. Finally, OSHA is proposing that sufficient potable water be made available. Exposure to contaminated water can result in various adverse health effects and insufficient water can result in dehydration, heat exhaustion, heat stroke, or other illnesses related to exposure to hot environments.

Based on the data currently available, OSHA estimates that the annual cost of complying with the proposed standard is expected to range between $15.5 million and $22.5 million or from $0.53-$0.77 per worker-day (ex. 11-017). Consequently this regulation is not a "major rule" as defined by the criteria of Executive Order 12291. OSHA recognizes the proposed standard may raise special implementation problems when employees are in geographically remote areas. The provision for toilet facilities represents anywhere from 28 to 34 percent of annual compliance costs depending upon crew size. Handwashing facilities are expected to result in annual compliance costs of between 45 and 47 percent of the total. Finally, the provision for drinking water will result in annual compliance costs of between 21 and 30 percent of the total annual compliance costs. OSHA solicits comments on the nature and extent of the regulatory burdens associated with these provisions.

OSHA has considered whether the farms affected by the standard will remain economically viable after compliance with the provisions of the proposal. Compliance costs will raise labor costs by no more than 2.0 percent and possibly by as little as 1.4 percent. This, in turn, will reduce the demand for hired farm labor from 1.5 to 2.2 percent at those farms covered by the standard. OSHA expects that the reduction in employment due to the proposed standard will range at the most from 1,750 to 2,570 person-years (between 4,600 and 6,700 employees), or from 0.6 to 0.9 percent of the 292,000 person-years of hired farm labor that would be affected by this proposal annually. It is likely, however, that a farm employer would only reduce his or her work force when the employment of one additional worker would require the employer to provide an additional toilet and handwashing facility. Finally, with production costs a fraction of consumer prices, and labor costs a fraction of production costs, it is unlikely that the demand for fruit and vegetables and fibers would change measurably (ex. 11-028).

The Regulatory Impact Analysis (ex. 11-017) describes several studies that suggest, however, that some adverse impacts may occur on farms with a high dependence on hired labor (e.g. vegetable and fruit operations). These are the same farms that would be most affected by the proposed standard.

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96-353, 94 Stat. 1164, 5 U.S.C. 601 et seq.), OSHA has given special consideration to the mitigation of the economic impacts of the proposed standard on small entities. OSHA does not anticipate that the proposed standard would adversely affect small entities, especially in light of the exemption of farms having fewer than 11 workers in the field at any one time. Nevertheless, OSHA seeks additional data on this subject, as well as other economic information to better determine the impact of this proposed standard.

IX. Environmental Assessment: Finding of No Significant Impact

OSHA has made a Finding of No Significant Impact because the proposed Field Sanitation standard would not cause or contribute to any significant impact in the quality of the human environment. The preparation of an Environmental Impact Statement for the proposal is therefore not required. This Finding of No Significant Impact was prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and DOL/NEPA regulations (29 CFR Part 11).

On March 1, 1983, OSHA announced in the Federal Register (48 FR 8494) its intentions to prepare an environmental assessment addressing the impact of a proposed standard that would require employers to provide sanitation facilities for agricultural employees working in the field. At that time, information was solicited from the public on a variety of environmental issues, including possible impacts of such a standard and any irreversible commitments of resources that would be involved should a standard be implemented. These comments have been reviewed by OSHA and support the determination that as a result of the proposal there will be no significant environmental consequences beyond the workplace.

The proposed standard, which requires employers to provide potable drinking water, facilities for handwashing, and toilets would have its greatest impact on the workplace environment and the health of the worker. These health effects are discussed in the previous sections of the preamble.

The qualitative assessment of the environmental effects of the proposed standard revealed no significant adverse impacts. However, a minimal increase in capital costs and a small increase in operating expenses in certain areas are anticipated. The annual costs (between $15.5 million and $22.5 million or from $0.53–$0.77 per worker per day) for implementing the standard would not be substantial in terms of the national economy or the general industry's overall market structure. Moreover, no significant impacts are expected on the environment external to the workplace as a result of the promulgation of the proposed standard.

Alternatives to the provisions of the proposed standard were either identified by OSHA or suggested by those submitting comments on the ANPR (48 FR 8593) prior to publication of the proposal. These are discussed in the description of the proposal.

From an environmental perspective the greatest potential problem in the absence of a standard is pollution of water or edible crops by feces. Lack of toilet facilities may lead to fecal contamination of edible crops, soils and surface waters and eventually sources of drinking water. Such fecal contamination has obvious dangerous health effects, which are discussed at length in the health effects section of the preamble to the proposed standard. The absence of drinking water carries with it no significant adverse environmental consequence. No substantive data was found that relates to the magnitude of environmental or edible crop pollution.

The proposed standard may result in greater reliance on portable tiolets. Standard practice is to discharge waste material from portable toilets into municipal sewage systems. This practice should further reduce problems from any improper use of pit privies.

If wastewater from handwashing facilities is discharged on-site, there is some minor risk of fecal contamination of soil or surface waters. Handwashing may also result in some redistribution of pesticides from fields to surface water. This latter contamination is almost certainly trivial when compared to pesticide contamination resulting from the runoff of rain water.

Current field sanitation technology also encompasses handwashing facilities that discharge waste water into holding tanks which are periodically discharged into municipal sewage systems. Assuming the proposed standard leads to more widespread use of this technology any possibility of problems from on-site discharge of handwashing waste water would also be reduced.

In conclusion, a qualitative assessment of the environmental effects of the proposed standard for field sanitation shows no significant adverse effects.

The promulgation of the field sanitation standard may result in environmental benefits although this may be localized. To the extent that employers of farm workers are complying with existing state regulations, environmental benefits in these states may have already been realized.

OSHA believes that the proposed standard will not cause or significantly contribute to any individual or cumulative environmental impact; and that under Section 102(2)(c) of the NEPA of 1969, 42 U.S.C. Section 4332(2)(c), promulgation of the proposed standard for field sanitation is not a major federal action significantly affecting the quality of the human environment. Evidence supporting this conclusion centers on the fact that the proposed requirements for field sanitation facilities are in accordance with existing federal and state health regulations and with accepted public health practices for which substantive data exist indicating beneficial health effects. Based on this discussion and other information presented in this notice, OSHA concludes that there will be no significant adverse impact on the general quality of the human environment external to the workplace, particularly in terms of ambient air quality, water quality, or solid waste disposal. Therefore, no Environmental Impact Statement is required. Instead, OSHA publishes this Finding of No Significant Impact and encourages the public to submit substantive comments and supporting data on this finding. OSHA, of course, reserves the right to perform additional environmental analyses based on the information and comments received in response to this Notice.

X. References

The studies and other data listed below as well as the additional material referred to in this document represent major sources upon which the proposal is based. A complete set of the references is available for examination and copying the OSHA Docket Office, Room S-6212, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, between 8:30 am. and 4:30 pm, Monday through Friday, legal holidays excepted.

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XI. Public Participation

Interested persons are invited to submit written data, opinion, and comments on this proposed standard. Persons who submitted comments on the 1976 proposal are encouraged to resubmit them if they wish them to be considered. Comments must be received on or before April 16, 1984 and submitted to the Docket Officer, Docket No. H-308, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room S-6212, Washington, D.C., 20210, (202) 523-7894. Written submissions must clearly identify the provisions of the proposal which are addressed, and the position taken on each issue.

The data, opinion and comments submitted will be available for public inspection and copying at the above address. All timely submissions will be part of the record of the proceeding.

Pursuant to section 6(b)(3) of the Act and in accordance with a court settlement agreement (D.C.C. Civ. Action 2142-73), an opportunity to submit oral testimony concerning the issues raised by the proposed standard will be provided at an informal public hearing to be scheduled at a later date.

XII. State Plan Standards

The 24 states with their own OSHA-approved occupational safety and health plans would have to adopt a comparable standard within six months of the publication date of a final standard. These states are: Alaska, Arizona, California, Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming. Until such time as a state standard is promulgated, federal OSHA will provide interim enforcement assistance, as appropriate, in these states.

XIII. Authority and Signature

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C., 20210. Pursuant to sections 6(b) and 8(g)(2) of the Act, it is hereby proposed to amend 29 CFR by adding a new § 1928.110 as set forth below.

List of Subjects in 29 CFR Part 1928

Agriculture, Occupational safety and health.

(Sec 6(b), and 8(g)(2). Pub. L. 91-596, 84 Stat. 1593, 1599, 1600; 29 U.S.C. 655, 657, 29 CFR Part 1911, Secretary of Labor's Order No. 9-83 (48 FR 35736)

Signed at Washington, D.C. This 24th day of February, 1984.

Thorne G. Auchter,

Assistant Secretary for Occupational Safety and Health.

PART 1928—[AMENDED]

It is proposed to amend 29 CFR Part 1928 by adding a new Subpart I consisting of § 1928.110 to read as follows:

Subpart I—General Environmental Controls

§ 1928.110 Field sanitation.

(a) *Scope.* This section shall apply to any agricultural establishment where eleven (11) or more employees are engaged on any given day in hand-labor operations in the field.

(b) *Definitions.—Hand-labor operations* means agricultural activities or operations performed by hand or with hand tools. Some examples of "hand-labor operations" are the hand harvest of vegetables, nuts, and fruit, hand weeding of crops and hand planting of seedlings. "Hand-labor" does not include such activities as logging operations, the care or feeding of livestock, or hand-labor operations in permanent structures (e.g., canning facilities or packing houses).

Handwashing facility means a facility providing either a basin, container, or outlet with an adequate supply of potable water, soap and single-use towels.

Potable water means water that meets the standards for drinking purposes by the state or local authority having jurisdiction or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Interim Primary Drinking Water Regulations, published in 40 CFR Part 141.

Toilet facility means a facility designed for the purpose of both defecation and urination, including biological or chemical toilets, combustion toilets, or sanitary privies, which is supplied with toilet paper adequate to employee needs. Toilet facilities may be either fixed or portable.

Agricultural employer means any person, corporation, association, or other legal entity that owns or operates an agricultural establishment or on whose premises or in whose interest an agricultural establishment is operated and any person, corporation, association or other legal entity who is responsible for the management and condition of an agricultural establishment or who acts directly or indirectly in the interest of an employer in relation to any employee.

Agricultural establishment is a business operation that uses paid employees in the production of food, fiber, or other materials such as seed, seedlings, plants, or parts of plants.

(c) *Requirements.* Agricultural employers shall provide the following for employees engaged in hand-labor operations in the field, without cost to the employee:

(1) *Potable drinking water.* (i) Potable water shall be provided and shall be placed in locations readily accessible to all employees.

(ii) The water shall be suitably cool and in sufficient amounts, taking into account the air temperature, humidity and the nature of the work performed, to meet employees' needs.

(iii) The water shall be dispensed in single use drinking cups or by fountains. The use of common drinking cups or dippers is prohibited.

(2) *Toilet and handwashing facilities.* (i) One toilet facility and one handwashing facility shall be provided for each twenty (20) employees or fraction thereof, except as stated in paragraph (c)(2)(iv) of this section.

(ii) Toilet facilities shall have doors that can be closed and latched from the inside and shall be constructed to insure privacy.

(iii) Toilet and handwashing facilities shall be accessibly located, in close proximity to each other, and within one quarter (¼) mile (0.4 kilometers) of each employee's place of work in the field. Where it is not feasible to locate

facilities accessibly and within the required distance due to the terrain, they shall be located at the point of closest vehicular access.

(iv) Toilet and handwashing facilities are not required for employees who perform field work for a period of three (3) hours or less (including transportation time to and from the field) during the day.

(3) *Maintenance.* Potable drinking water and toilet and handwashing facilities shall be maintained in accordance with appropriate public health sanitation practices, including the following:

(i) Drinking water containers shall be covered, cleaned and refilled daily;

(ii) Toilet facilities shall be operational and maintained in clean and sanitary condition;

(iii) Handwashing facilities shall be maintained in clean and sanitary condition; and

(iv) Disposal of wastes from facilities shall not cause unsanitary conditions.

(4) *Reasonable use.* Employees shall be allowed reasonable opportunities during the workday to use the facilities.

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BILLING CODE 4510-26-M

Mine Safety and Health Administration

30 CFR Parts 55, 56, and 57

Metal and Nonmetal Mining Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Withdrawal of proposed rule.

SUMMARY: This notice withdraws pending proposals for metal and nonmetal mine safety and health standards published by the Mining Enforcement and Safety Administration (MESA) on January 28, 1977. An ongoing comprehensive review of all metal and nonmetal standards begun in 1980 by MESA's successor agency, the Mine Safety and Health Administration (MSHA), supercedes the pending MESA proposals.

DATE: This withdrawal is effective March 1, 1984.

FOR FURTHER INFORMATION CONTACT: Patrica W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA (703) 223-1910.

SUPPLEMENTARY INFORMATION: On January 28, 1977 (42 FR 5546), the Mining Enforcement and Safety Administration (MESA) of the U.S. Department of the Interior published a notice in the Federal Register proposing to revise metal and nonmetal mine safety and health standards in 30 CFR Parts 55, 56, and 57 and add new standards. Among the proposals were mandatory safety and health standards relating to mining hazards in the areas of ground control, fire prevention and control, ventilation, radiation, electricity, personal protection, personnal hoisting, and gassy mines. On July 14, 1977 (42 FR 36273) MESA published a subsequent notice that objections had been filed and hearings had been requested on a number of the January 28, 1977 proposals. On October 31, 1977 (42 FR 57038), MESA published final actions on the proposals for which no hearings were requested.

In March 1978, the Federal Mine Safety and Health Act of 1977 (Mine Act) became effective, transferring MESA from the Department of the Interior to the Department of Labor and renaming the Agency the Mine Safety and Health Administration (MSHA). The Mine Act also transferred all rulemaking authority, including that for pending actions, to the Secretary of Labor. At the time of the transfer, no further action had been taken on the proposals listed in the July 1977 notice.

On August 17, 1979 (44 FR 48490), MSHA published final rules which revised as mandatory or revoked all advisory standards applicable to metal and nonmetal mines. Among these final rules were the majority of the pending January 28, 1977 proposals for which hearings had been requested. No action, however, was taken on proposals which involved new or revised mandatory standards.

In 1980, MSHA began a comprehensive review of all its metal and nonmetal safety and health standards. This ongoing review has involved extensive participation by the public in the rulemaking process, and includes the hazard areas addressed in the pending January 28, 1977 proposals. For this reason, MSHA is withdrawing the January 28, 1977 proposals for which no final rulemaking action has been taken. The proposals are listed below, captioned as they appeared in 42 FR 36273.

Ground Control

57.3-34 Ground control plan specifications.

55.3-52, 56.3-52 and 57.3-52 Prompt installation of rock bolts.

55.3-58, 56.3-58, and 57.3-58 Alignment compensation in rock bolting.

Fire Prevention

57.4-87 Fire-suppression systems on attended internal-combustion engine-driven equipment.

57.4-88 Fire-suppression systems on attended electrical-powered equipment using non-fire-resistant hydraulic fluid.

Ventilation

57.5-18E Mechanical ventilation equipment.

57.5-35B Booster fan installation and inspection.

Radiation

57.5-43 Radon daughter concentrations in exess of 0.3 WL sampling.

Electricity

55.12-1, 56.12-1, and 57.12-1 Fuses and circuit breakers.

55.12-3, 56.12-3, and 57.12-3 Trailing-cable overload and short circuit protection.

Personal Protection

55.15-14, 56.15-14, and 57.15-14 Quick-drenching facilities.

Personnel Hoisting

55.19-7, 56.19-7, and 57.19-7 Prevention of overtravel and overspeed.

55.19-15, 56.19-15, and 57.19-15 Strength of conveyance connections.

55.19-16, 56.19-16, and 57.19-16 Cage and skip requirements.

Gassey Mines

57.21-50 Tubing and brattice maintenance.

57.21-78 Permissible equipment.

Dated: February 27, 1984.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 84-5552 Filed 2-29-84; 8:45 am]
BILLING CODE 4510-43-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Opportunity for Public Hearing on Proposed Modifications to the Maryland Permanent Regulatory Program; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; correction.

SUMMARY: On Thursday, February 16, 1984, on page 5971, a document appeared concerning the Maryland Permanent Regulatory Program. This document corrects the hearing date and the date by which persons interested in making oral or written presentations at the hearing must contact OSM.

FOR FURTHER INFORMATION CONTACT: David H. Halsey, (304) 347-7158.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 16, 1984, make the following corrections:

1. On page 5972, first column, first paragraph under the heading "DATE" in the sixth line, "February 21, 1984" should have read "March 12, 1984".

2. In the same column, in the second paragraph under the heading "DATE", in the sixth line, "February 13, 1984" should have read "March 5, 1984".

Dated: February 23, 1984.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 84-5434 Filed 2-29-84; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD8-83-09]

Regulated Navigational Area; Sabine Neches and Calcasieu Waterways

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Coast Guard (USCG) is considering amending the regulations in 33 CFR Part 165 to require all vessels with tows on a hawser transiting the Sabine-Neches Waterway near Port Arthur, TX and the Calcasieu Waterway near Lake Charles, LA to have a tug made up to the tow so as to provide complete and effective control of the tow at all times. This requirement is necessary to enhance the safety of navigation and to protect the safety of structures in and along the waterway.

DATES: Comments must be received on or before April 16, 1984.

ADDRESSES: Comments should be mailed to Commander, Eighth Coast Guard District (mps), Rm. 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA. 70130. The comments and other documents referenced in this Notice will be available for inspection and copying at the above address. Normal office hours are between 8 a.m. to 4 p.m. Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: LCDR D. A. Lentsch, USCG Marine Safety Office, Federal Building, 2875 75th St. & Hwy. 69, Port Arthur, TX, 77640, (409) 724-4339, or LCDR M. W. Brown, c/o Commander, Eighth Coast Guard District (mps), Rm 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA, 70130, (504) 589-6901.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (Docket No. CGD8-83-09), the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rule-making process.

Drafting Information

The drafters of this notice are LCDR M. W. Brown, USCG, project officer, c/o Commander, Eighth Coast Guard District (mps), and LCDR R. W. Bruce, USCG, project attorney, c/o Commander, Eighth Coast Guard District (d1), Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130.

Discussion of Proposed Regulation

In the past, there has been a problem with barges being towed on a hawser in the Sabine-Neches and the Calcasieu Waterways due to the inherent lack of maneuverability of such a towing configuration.

The towing vessel is reasonably maneuverable, but the barge is not. This lack of maneuverability becomes critical in a narrow waterway. Between 1978 and 1981 there were 4 collisions between vessels and 7 aids to navigation were destroyed by barges being towed on a hawser. These casualties were directly attributable to the lack of maneuverability of the towing configuration. The total cost of the damage is estimated as well over a quarter million dollars. In addition, there were several near misses. No lives were lost as result of these casualties, but the potential for a catastrophic accident was clearly there. This problem of a lack of control of tows on the narrow waterways presented an unacceptable risk to navigation.

Meetings were conducted by the Captain of the Port, Port Arthur, Texas with members of the Maritime industry in 1982 in which the problem and the proposed solution of limiting tows on a hawser were discussed. The general consensus of those meetings was that some type of restriction on tows on a hawser was necessary. Accordingly, the Captain of the Port, Port Arthur issued COTP Orders prohibiting tows on a hawser unless a second towboat was tied to the tow. Since those orders went into effect, there have been no casualties attributable to the lack of control of towed vessels. The Coast Guard feels that the most appropriate way to permanently control this situation is through a Regulated Navigation Area.

Economic Assessment and Certification

This proposed regulation is considered to be non-significant and, accordingly, a draft evaluation has been prepared and placed in the public docket as required by the DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). As explained in the evaluation, the cost to industry of this regulation varies from approximately $165,000.00 to $2,000,000.00 per year depending on whether or not a second towboat is provided and the distance of the transit. Since the cost, however, of a catastrophic accident could be over 8 million dollars, as well as human lives, the Coast Guard feels the cost is justified. Based upon this assessment it is certified in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (Water) Vessels, Waterways.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations by adding new §§ 165.806 and 165.807 to read as follows:

§ 165.806 Sabine Neches Waterway, Texas-Regulated Navigation Area.

(a) The following is a regulated navigation area—The Sabine Neches Waterway which includes the following waters: Sabine Pass Channel, Port Arthur Canal, Sabine Neches Canal,

Neches River, Sabine River and all navigable waterways tributary thereto.

(b) All vessels with tows on a hawser transiting the Sabine-Neches Waterway are also to have a tug of sufficient horsepower made up to the tow in such a manner as to insure that complete and effective control is maintained throughout the transit. Inbound vessels only, may shift the tow or pick up an additional tug within 100 yards inside the entrance jetties provided that such action is necessary for reasons of prudent seamanship.

(c) Any deviation from this regulation must be requested in advance in writing from the USCG Captain of the Port, Port Arthur, TX and must contain a complete description of the contemplated operation as well as its necessity.

§ 165.807 Calcasieu River, Louisiana—Regulated Navigation Area.

(a) The following is a regulated navigation area—The Calcasieu River from the Calcasieu jetties up to and including the Port of Lake Charles.

(b) All vessels transiting the Calcasieu River from the Calcasieu jetties to the Port of Lake Charles, LA with a tow on a hawser are also to have a tug of sufficient horsepower made up to the tow in such a manner as to insure that complete and effective control is maintained at all times. Inbound vessels only, may shift the tow or pick up an additional tug within 100 yards inside the entrance jetties provided that such action is necessary for reasons of prudent seamanship.

(c) Any deviation from this regulation must be requested in advance in writing from the USCG Captain of the Port, Port Arthur, TX and must contain a complete description of the contemplated operation as well as its necessity.

(Sec. 2. Pub. L. 95-474, 92 Stat. 1475, 1477 (33 U.S.C. 12.25, 1231); 49 CFR 1.46 (n) (4))

Dated: February 16, 1984.

W. H. Stewart,

Rear Admiral, U.S. Coast Guard.

[FR Doc. 84-5541 Filed 2-29-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD-III-FRL 2535-6]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: On March 28, 1983 Indiana submitted as a revision to its total suspended particulate (TSP) State Implementation Plan (SIP) an alternative opacity limit for the underfire stack at Bethlehem Steel Corporation's Coke Battery No. 2 in Porter County. The alternative limit is 20% opacity averaged over a 2-hour period. EPA has reviewed the opacity limit under the requirements of the Clean Air Act (Act) and is proposing to approve the limit.

DATE: Comments on this revision and on the proposed EPA action must be received by April 30, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Robert B. Miller at (312) 886-6031 before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

Comments on this proposed rule should be addressed to: Gary Gulzian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Robert B. Miller, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On March 28, 1983, Indiana submitted as a revision to its TSP SIP an alternative opacity limit for the underfire stack at Bethlehem Steel Corporation's Coke Battery No. 2 in Porter County. Additional information and documentation were submitted on May 12, 1983. The proposed alternative opacity limit would prohibit Bethlehem from emitting visible emissions in excess of 20% opacity, as averaged over a 2-hour period. The current opacity limitation which is applicable to this source is contained in Regulation SIP APC 3 which prohibits visible emissions from any source in excess of 40% opacity (federally approved October 28, 1975, 40 FR 50033).

In order to qualify for an alternative opacity limitation, a source must conduct visible emissions observations simultaneously during the performance of a representative particulate mass stack test which complies with the requirements of the applicable mass emission limitation. The applicable SIP mass emission limitation for this coke battery stack is 0.33 lbs/MMBTU, as derived from Indiana SIP Regulation 325 IAC 6-2 (December 6, 1983, 48 FR 54599).

Indiana has submitted stack test data which indicates that this coke battery stack complied with a limitation of 0.037 grains per dry standard cubic foot (gr/dscf), or 0.076 pounds of TSP per million British Thermal Units (lbs/MMBTU). Visible emissions were observed during the 2-hour stack test, which averaged 20 percent opacity. The state of Indiana believes that these visible emissions are representative of the performance of this coke battery stack during the complying stack test. The results of this stack test demonstrate that this battery is capable of performing at a mass level which is much more stringent than the SIP; and, therefore, EPA is proposing to approve the alternative opacity limitation.

The area in which the Bethlehem Steel Corporation coke battery is located was designated as an unclassified area in terms of air quality when EPA initially promulgated classifications under Section 107 of the Clean Air Act in 1978. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). The unclassified designation means that the available air quality information in 1978 was not conclusive enough to classify the area as attaining or not attaining the national ambient air quality standard for TSP.[1] Subsequent to this original classification, on August 18, 1982 (47 FR 35965), EPA designated this area as nonattainment, on the basis of monitoring data which showed violations of the TSP NAAQS. The United States Court of Appeals for the Seventh Circuit vacated this designation on December 13, 1983, holding that the Clean Air Act did not give EPA the procedural authority to unilaterally modify designations under Section 107 of the Act after the date of the initial promulgations in 1978. See *Bethlehem Steel Corporation* v. *U.S. EPA*, Cause No. 82-2608, Slip Opinion dated December 13, 1983. The Court did not reach the issue of the validity of the underlying data supporting the redesignation.

In the aftermath of the Court's ruling, this area reverts back to its previous unclassified status. the data which demonstrates monitored violations of the TSP NAAQS is available for public review in the rulemaking docket on the redesignation of Porter County, Indiana.

[1] The primary TSP NAAQS are violated when, in a year, either: 1) the geometric mean value of monitored TSP concentrations exceeds 75 micrograms per cubic meter of air (75 $\mu g/m^3$) (the annual primary standard), or 2) the maximum 24-hour concentration of TSP exceeds 260 $\mu g/m^3$ more than once (the 24-hour standard). The secondary TSP NAAQS is violated when, in a year, the maximum 24-hour concentration exceeds 150 $\mu g/m^3$ more than once.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities.[2] See 46 FR 8709.

List of Subjects in 40 CFR Part 52

Air Pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

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

(Secs. 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a))

Dated: December 30, 1983.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-5582 Filed 2-29-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[AD-V-FRL 2535-2]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Wisconsin

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA proposes to revise the Total Suspended Particulates (TSP) designation for the City of Marinette, Wisconsin, from unclassified to attainment. This proposed revision is based on a redesignation request from the Wisconsin Department of Natural Resources (WDNR) and on supporting technical data submitted by the Department. Under the Clean Air Act, attainment status designations can be changed if sufficient data are available to warrant such changes. The intent of this notice is to discuss the results of EPA's review of the WDNR's redesignation request and their supporting technical data, and to solicit public comment on the revision and on EPA's proposed action.

DATE: Comments on this redesignation and on EPA's proposed action must be received by April 2, 1984.

ADDRESSES: Copies of the redesignation request, the technical support documents, and the supporting air quality data are available at the following addresses:

Environmental Protection Agency, Region V. Air Programs Branch 230 S. Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to: (Please submit an original and five copies, if possible) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Collen W. Comerford, (312) 886-6034.

SUPPLEMENTARY INFORMATION: Under Section 107(d) of the Clean Air Act, the Administrator of EPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for each area of Wisconsin. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations may be revised if sufficient data are available to warrant such changes.

Background

EPA's criteria for Section 107 redesignations are summarized in an April 21, 1983, policy memorandum from Sheldon Meyers, former Director of the Office of Air Quality Planning and Standards, entitled "Section 107 Designation Policy Summary." The memorandum states that, in general, all available information relative to the attainment status of the area should be reviewed. The information should include the most recent eight consecutive quarters of quality-assured representative ambient air quality data, plus evidence of an implemented EPA-approved control strategy. The same general criteria apply (e.g., eight quarters of representative monitoring data showing no violations of the NAAQS) for redesignations from unclassified to attainment, except that evidence of an implemented federally-approved control strategy is not required. This is because Federal Part D State Implementation Plans (SIPs) are not required in unclassified areas. However, assurances that the NAAQS will continue to be maintained are appropriate.

Marinette—TSP

The amended Clean Air Act (August 1977) required all States to determine their attainment/nonattainment status with respect to the NAAQS. During 1977-1978, violations of the primary and secondary 24-hour TSP standard were recorded by monitors in the Marinette area. However, the adequacy of the data was questioned due to the possibility of improper monitor siting and impacts from short-term construction activity. Because of this uncertainty, Wisconsin recommended to EPA that Marinette be designated unclassifiable with respect to the TSP standards until more information could be gathered, and EPA did so designate Marinette in 1978.

One June 21, 1983, the WDNR requested that EPA revise the air quality attainment status designation for the City of Marinette, from unclassified to attainment of the TSP NAAQS. The WDNR also submitted a Technical Support Document with summaries of the TSP ambient air monitoring data collected from five sites in Marinette, Wisconsin, during 1977–1978 and 1981–1983. Additional technical information was provided on October 7, 1983, and January 25, 1984. These documents, and the results of EPA's review of these documents are available for public inspection at the Region V Office listed above.

The data show that no violations of the TSP standards have occurred since 1978. Nine consecutive quarters of recent data (April 1981-June 1983), showing no violations, are available from two sites in Marinette, and six nonconsecutive quarters of recent data (April-August 1981, and July 1982-June 1983), showing no violations, are available from a third site in Marinette. These three sites provide adequate spatial coverage of the area. Thus, the available data provide sufficient spatial and temporal coverage to demonstrate that the TSP NAAQS are being attained.

Furthermore, the WDNR has supplied evidence that many of the exceedances recorded in 1977–1978 resulted from improper monitor siting and short-term construction activitiy, so these exceedances were discarded as invalid and unrepresentative. However, the remaining valid data do show multiple secondary exceedances at one site in Marinette, Wisconsin, and one site in Menominee, Michigan. Correction of these exceedances can be linked to various control measures cited by the WDNR, as discussed below.

The Ansul Company was required to monitor emissions when their salt pile was removed during 1977–1978. The fugitive emissions that resulted from the blasting of the pile and the subsequent handling operations were a significant source of TSP. Upon completion of the pile's removal in September, 1978, this

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[2] The requirements for an approvable SIP in designated nonattainment areas are described in a "General Preamble" for Part D rulemakings published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

source of emissions was eliminated, resulting in an improvement in TSP air quality levels. Additional TSP emission reductions have been achieved at Ansul through the installation of a baghouse. In addition, Ansul was issued an operating permit in 1981 which specifies TSP emission limitations for their new grit blasting booth. Emission reductions resulting from these control measures, plus the existence of some enforceable emission limits, ensure that the NAAQS will continue to be maintained. Therefore, EPA is proposing to revise the designation of the City of Marinette, Wisconsin, defined at 40 CFR 81.350, from unclassified to "better than the national standards" (attainment) for TSP.

All interested persons are invited to submit written comments on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether EPA will approve the redesignation. After review of all comments submitted, the Administrator of EPA will publish in the Federal Register the Agency's final action on the redesignation.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

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

List of Subjects in 40 CFR Part 81

Intergovernmental relations, Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407)

Dated: December 27, 1983.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-5583 Filed 2-29-84; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 536

[Docket No. 84-3]

Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States; Intermodal Tariff Filing Requirements—Exemption From Certain Statutory Requirements and Amendment of Tariff Filing Regulations

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is initiating this rulemaking proceeding for the purpose of amending its regulations relating to intermodal tariffs. These amendments involve a permanent expansion of two major intermodal tariff filing standards which are presently in effect in the foreign commerce on a limited basis.

Briefly, the proposals are to promulgate an exemption which will permit carriers and conferences of carriers to publish *amendments* to intermodal tariffs which establish new or initial joint through intermodal rates and/or through intermodal rates without adhering to the present 30 day filing notice requirements contained in section 18(b) and 18(c) of the Shipping Act, 1916 (46 U.S.C. 817) and the Commission's regulations in General Order 13 (46 CFR 536.10(a)). Filings made under section 18(c) will be limited to certain circumstances described herein. Further, the Commission proposes to promulgate an exemption which will permit carriers and conferences of carriers to file joint through intermodal rates and/or through intermodal rates without publishing the division, rate, or charge collected by the water carrier for the port-to-port portion of such rates. Finally, the Commission is proposing to amend its definitions and tariff filing regulations relative to intermodal tariffs. The proposed changes are intended to simplify tariff publications while allowing carriers and conferences of carriers to be more responsive to the needs of the shipping community.

DATE: Comments (original and 15 copies) due on or before April 30, 1984.

ADDRESS: Comments should be mailed to: Francis C. Hurney, Secretary, Federal Maritime Commission, Room 11101, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, Room 11101, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Commission proposes to promulgate rules which will permit carriers and conferences to publish *amendments* to intermodal tariffs which establish new or initial joint through intermodal rates and/or through intermodal rates without adhering to the present 30 day filing notice requirements contained in section 18(b) and 18(c) of the Shipping Act, 1916 (46 U.S.C. 817) and the Commission's regulations in General Order 13 (46 CFR 536.10(a)). Insofar as controlled carriers subject to section 18(c) are concerned the establishment of new or initial intermodal rates on less than 30 days' notice will be limited to tariff amendments which provide for rates which meet, but do not go below those of non-controlled carriers. Further, the Commission proposes to promulgate rules which will permit the filing of joint through intermodal rates and/or through intermodal rates without publishing the division, rate, or charge collected by the water carrier for the port-to-port portion of such rates. Additionally, the Commission proposes to amend its definitions and tariff filing regulations relative to intermodal tariffs. The intent of the proposals in this rulemaking is to simplify tariffs while allowing carriers and conferences of carriers to respond to the needs of the shipping community.

Each change proposed in this rulemaking is discussed below:

1. Exemption From 30 Day Filing Requirement for New or Initial Intermodal Rates

Until 1972, the practical application of the 30 day notice requirement for new or initial rates related to the establishment of a tariff published by a carrier which named rates for the first time to and/or from certain named ports. Carriers have traditionally published port-to-port tariffs on the basis of naming ranges of ports, e.g., from Atlantic and Gulf ports to ports in the Bordeaux/Hamburg range. In order to account for the establishment of a rate on any possible tender of cargo, freight tariffs provided a freight rate referred to as Cargo, N.O.S. The publication of a range of ports and a Cargo, N.O.S. rate, therefore, allowed a carrier to initiate operations with a relatively simple tariff covering services between a wide range of ports such as ports in the Bordeaux/Hamburg and Searsport, Maine and Brownsville, Texas ranges providing an effective applicable rate on any conceivable commodity which might be shipped.

With the advent of intermodalism, section 18(b)(2) took on a new practical application. A tariff naming an intermodal rate requires naming a "point" from, to or between which the cargo will move. Therefore, each rate so named is by its nature restricted to the specifically named point. Thus, for example, when a carrier names intermodal rates applying from Chicago, Illinois to Frankfurt, Germany, the application of such rate is so restricted, whereas prior to intermodalism a carrier would name a rate for port-to-port service between the Atlantic and Gulf ports and ports in the Bordeaux/Hamburg range and attract port-to-port

cargo not only from Chicago, but also from Gary, Indiana and remain competitive with such a rate structure.

The Commission proposes an exemption of the 30 day filing notice requirement contained in section 18 (b) and (c) of the Shipping Act, 1916 (46 U.S.C. 817) and the Commission's tariff filing regulations in 46 CFR 536.10(a) in order to allow *amendments* to tariffs which provide for the establishment of new or initial joint through intermodal rates and/or through intermodal rates [1] to become effective on filing. Such *amendments* by controlled carriers will be limited to those circumstances where the filings are made to meet the intermodal rates of non-controlled carriers in the trades. The rates of a controlled carrier shall not be lower than a non-controlled carrier when using this exemption. All carriers and conferences shall, however, (whether filing intermodal amendments under the requirements of section 18(b) or 18(c)) abide by the thirty day notice requirement applicable to the publication and filing of a new or initial intermodal *tariff* (see 46 CFR 536.3(n)) to which the instant type amendments will be filed.

The instant exemption would provide an expedient tariff filing method which would allow carriers and conferences to offer shippers prompt intermodal service(s) on the actual commodity or commodities which move from or to inland points in the foreign commerce.

The Commission has gained experience in the concept of the proposed exemption through its actions in February, March and June, 1983, wherein it granted special permission waiving the 30 day requirement contained in section 18(b) and 46 CFR 536.10(a)(2) to carriers and conferences of carriers operating in the U.S. Atlantic/Gulf/European/United Kindgom/Scandinavian trades to permit the establishment of new or initial intermodal rates and provisions on one day's notice. It is estimated that over 30,000 rate actions have been implemented through the use of the waivers granted by the Commission. To date the Commission has received no complaints concerning the rate levels or service by the carriers and conferences using the "one day" special permission authority granted by the Commission.

The proposed exemption would also permit controlled carriers to establish new or initial intermodal rates on less than 30 days' notice provided, however, that such rate actions are filed to meet the rates of those established by non-controlled carriers.

If the proposed exemption is not extended to controlled carriers, it is anticipated that handling special permission applications for controlled carriers on an individual basis will cause an unnecessary administrative burden for the Commission. Presently, the Commission has identified 30 controlled carriers operating in the major trades which involve tariff publications contgaining thousands of intermodal rates. When an intermodal rate is established by a non-controlled carrier under the proposed 18(b) exemption, a controlled carrier would be required to file any similar rate on 30 days' notice, unless such controlled carrier would request relief pursuant to 46 CFR 536.15. Inasmuch as section 18(c) of the Shipping Act, 1916 (46 U.S.C. 817(c)) appears to set a standard whereby a rate of a non-controlled carrier may be used as justification by a controlled carrier for the establishment of the same rate level, it would appear that the Commission's proposal to allow for such rate actions on less than 30 days' notice would not be contrary to the intent of section 18(c). The proposed rule which will require that controlled carriers identify each amendment filed under the proposed 18(c) exemption should provide the necessary reference to interested parties seeking information on any controlled carrier's rate activity.

Commenting parties may wish to suggest a filing notice period somewhere between the present 30 day requirement and the proposed immediate notice with respect to intermodal rates filed under section 18 (b) or 18(c). Such comments should be supported with the rationale for the suggested filing notice period.

2. Exemption of Port-to-Port Break-Out Requirement

The Commission proposes to provide an exemption to carriers and conferences publishing tariffs which name joint through intermodal rates and/or through intermodal rates which will eliminate the present requirement to publish the port-to-port portion of a through rate. This requirement is shown as a tariff filing requirement for tariffs naming through rates in 46 CFR 536.8(b) and reads in pertinent part as follows:

* * * Such tariffs shall * * * clearly indicate the division, rate or charge to be collected by the water carrier subject to the Act for its port-to-port portion of the through service, which division rate or charge shall be treated as a proportional rate subject to the provisions of the Act.

Ocean commerce is generally one part of the overall movement of goods from manufacturer to ultimate purchaser. It is the rare cargo which starts and ends its journey at waters' edge. The carriage of goods by ocean common carriers has, therefore, always been linked to reliance on other modes of transportation to bring cargo to the vessel and to continue cargo on its route once the vessel has been off-loaded. The advent of widespread use of containerized methods of shipment has led to the establishment of joint through intermodal rates and through intermodal rates which express a single cost to the shipper and which are frequently lower than the sum of local rates charged by connecting carriers. The divisions of such intermodal rates are established by agreements among the several connecting carriers.

The Interstate Commerce Commission's decision in Ex Parte 230 (Sub-No. 5). *Improvement of TOFC/COFC Regulation,* 46 FR 14349 (1981), prompted the Federal Maritime Commission to publish an interim rule in order to temporarily waive a portion of the Commission's tariff filing rules governing through rail/ocean transportation in foreign commerce (46 CFR 536.8(c)). The interim rule published on March 25, 1981 (46 FR 18549) waived the publication of port-to-port divisions for through rail/ocean transportation. In publishing the interim rule, it was noted that focusing solely on the through rate would permit the FMC to "* * * lessen regulatory burdens on intermodal traffic by eliminating the present requirement for separately breaking out the ocean carrier's port-to-port division." 46 FR 18549, 18550 (1981). The temporary waiver of the port-to-port filing requirement contained in 46 CFR § 536.8 was not considered an action which would impede enforcement responsibilities or alter formal complaint procedures. The purpose of the temporary waiver was to ensure that "* * * there is no disruption of foreign commerce while the Commission attempts to develop final rules which will assure effective Shipping Act enforcement without placing undue regulatory burdens on intermodal cargoes." 46 FR 18549, 18550 (1981).

Based on the experience gained under the interim rule, the Commission believes that the omission of the port-to-

[1] The terms "joint through intermodal rate" and "through intermodal rate" are to be construed as such terms are defined in this proceeding.

port portion of the through rate in the ocean tariffs has not resulted in any impairment of effective regulation of that service, nor have any complaints been lodged with the Commission concerning the tariffs which do not contain break-outs. Therefore, because the present exemption does not appear to have resulted in any unjust discrimination or detriment to commerce and because the present requirement does not appear to serve any necessary regulatory purpose, the Commission is proposing to exempt the port-to-port break-out requirement for all intermodal tariffs under section 35 of the Act (46 U.S.C. 833(a)). The proposals contained in this proceeding, in our opinion, would merely allow for expanded participation by our regulated ocean carriers in intermodal movements by simplifying tariff publications.

3. Technical Amendments

The exemption proposals discussed above are intended to apply to intermodal rates. e.g. ocean/rail as well as ocean/motor. They do not cover all-water joint rates. The two categories of intermodal rates covered by the rule, "joint through" rates and "through" rates, differ in the roles played by the involved carriers, and their relationships to one another. A "joint through intermodal rate" is a rate under which ocean and inland carriers jointly hold themselves out to perform the service. A "through intermodal rate" is a rate under which an ocean carrier holds itself out to perform the entire through service, part of which is actually being performed by an inland carrier. The filing requirements in the proposed rule are the same for both categories of through rates, except that a tariff containing a joint through intermodal rate must set out the names of all participating common carriers and a description of the services performed by such carriers which are included in the through rates. The current requirement that participating carriers be listed in intermodal tariffs is being retained in connection with tariffs that name joint through intermodal rates so that tariff users will know what services are to be performed by inland carriers. However, it is proposed that the listing requirement not be applied to through intermodal rate filings, since they do not involve a "holding out" by the inland carrier and the ocean carrier will be responsible for the entire movement.

The proposal would also require that:

1. Through intermodal rates be filed in the name of persons subject to the Shipping Act, 1916;

2. Tariffs containing through rates show the origin, destination and ports through which the cargo actually moves. Each origin and destination point is to be described by its commonly used geographic name. Additionally, it is proposed that carriers be permitted to publish rates which apply from, to, or between all points within a named region; and

3. The liability be clearly set forth in a contract of affreightment consistent with the holding out provided by the application of the rates and conditions of the tariff.

Omitted in the proposed rules is a separate definition of the term through route. The proposed definitions, however, incorporate the substance of the present definition.

The present requirement for a memorandum of arrangement has been omitted from the proposed as no longer necessary.[2]

An amendment to the Commission's present definition of "joint rate" under 46 CFR 536.2(h) is proposed so that it relates solely to ocean carriers which establish through rates with other ocean carriers for all-water services.

Appropriate modification of the CFR is also necessary to permit alphabetization of the proposed definitions in this proceeding.

Commenting parties are encouraged to address any jurisdictional issues raised by the proposed rules and are further requested to submit draft language for alternative rules which they might advance. If any draft language concerns tariff filing methodology, detailed rationale for such language must be supplied by the commenting party. Should any party feel that pursuant to section 35 of the Shipping Act, 1916 (46 U.S.C. 833(a)), an evidentiary hearing is required on the exemption proposals in this Proposed Rulemaking proceeding, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding and why such proof cannot be submitted through affidavit.

The Commission finds that the proposed amendments to its rules are exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601). Section 601(2) of the Act excepts from its coverage any "rule of particular applicability relating to rates * * * or practices relating to such rates * * *."

[2]The purpose of the regulation as stated by the Commission (35 FR 6394, April 21, 1970) was that the requirement "* * * will insure that the Commission is made aware of persons which would not otherwise be subject to the Commission's jurisdiction but who might become so by entering into joint rate arrangements, and that arrangements between such parties not relating to rates (e.g., exclusive of preferential arrangements) will be submitted for section 15 determinations."

As the proposed amendments relate to particular applications of rates and rate practices, the Regulatory Flexibility Act requirements are inapplicable. There are no information collection requirements contained in these proposed amendments to be considered for approval by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1930 (Pub. L. 96-511).

List of Subjects in 46 CFR Part 536

Maritime carriers, Rates.

Therefore, pursuant to 5 U.S.C. 553 and sections 18(b), 18(c), 35 and 43 of the Shipping Act, 1916 (46 U.S.C. 817(b), 817(c), 833(a) and 841(a)), the Federal Maritime Commission proposes to amend 46 CFR Part 536 by:

PART 536—[AMENDED]

1. Adding paragraphs (e) and (f) to 536.1 which will read as follows:

§ 536.1 Exemptions and exclusions.

* * * * *

(e) Amendments to intermodal tariffs. carriers and conferences of carriers publishing amendments to intermodal tariffs which provide for new or initial joint through intermodal rates and/or through intermodal rates are exempt from the 30 day filing notice requirements of section 18(b) and 18(c) of the Shipping Act, 1916 (46 U.S.C. 817) and the Commission's tariff filing regulations in 46 CFR 536.10(a). Provided, however, that amendments filed pursuant to this exemption shall not become effective earlier than upon publication and filing or some time interval less than 30 days. Provided, further that amendments filed by controlled carriers, subject to section 18(c), Shipping Act, 1916, as amended, may be filed only when such amendments provide for rates which meet but do not go below those previously established by non-controlled carriers. Each amendment filed by a controlled carrier under authority of this exemption shall bear the following notation: "Filed pursuant to 46 CFR 536.1(e)."

(f) Intermodal rate tariffs. Carriers and conferences of carriers publishing tariffs containing joint through intermodal rates and/or through intermodal rates are exempt from the requirements of section 18(b) of the Act (46 U.S.C. 817(b)) to the extent that such tariffs may omit the divisions, rates or charges which comprise the port-to-port portion of such rates.

2. Section 536.2 is amended by redesignating paragraphs (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (q), and (p) as: (g),

(h), (i), (k), (l), (m), (o), (p), (q), (r), (s), and (u), respectively.

3. Amending 536.2 by adding new paragraphs (f), (j), (n), and (t) to read as follows:

§ 536.2 Definitions.

* * * * *

(f) *Contracting Carrier.* A carrier which performs part of a through intermodal service in the capacity of a subcontractor on behalf of and in the name of a carrier which is subject to the Act.

* * * * *

(j) *Joint through intermodal rate.* A rate jointly established by two or more carriers, at least one of which is subject to the Act, for through transportation over the combined routes of such carriers, between: (1) Points in the United States and ports in a foreign country; (2) points in the United States and points in a foreign country; or (3) ports in the United States and points in a foreign country. Tariffs which name joint rates must also list the participating carriers.

* * * * *

(n) *Participating Carrier.* A carrier that holds itself out to perform a portion of a joint through intermodal service.

* * * * *

(t) *Through intermodal rate.* A rate established by a carrier or carriers subject to the Act, which covers a through service, part of which is performed by a contracting carrier or carriers, for through transportation over the combined routes of such carriers, between: (1) Points in the United States and ports in a foreign country; (2) points in the United States and points in a foreign country; or (3) ports in the United States and points in a foreign country.

* * * * *

4. Amending § 536.2 by revising newly redesignated paragraph (i) to read as follows:

* * * * *

(i) *Joint rates.* Rates or charges established by two or more carriers for ocean transportation over the combined routes of such carriers.

* * * * *

5. Section 536.8 is revised to read as follows:

§536.8 Tariffs containing through rates and through routes.

Intermodal tariff filing requirements. Every carrier subject to the Act, which establishes through intermodal rates and/or joint through intermodal rates, shall file tariffs stating all such rates and related charges, rules, regulations, privileges or facilities, granted or allowed. Such tariffs shall be filed and maintained in the manner set out in the Act, and in accordance with the rules of this part. Intermodal tariffs shall be filed in the name of the carrier or conference subject to the Act. In addition, such tariffs shall contain the following provisions:

(a) A notation on the Title Page that the publication contains through intermodal rates and/or joint through intermodal rates. Also, an identification of the modes of service, i.e., rail-water, water-motor, etc., shall be shown.

(b) List, either on the Title Page or on an interior page referenced on the Title Page, all ports or points to, from and between which the rates apply and the ports through which cargo originating or terminating in such places shall move. Each port or point served shall be described by its commonly used geographic name. When rates are established which apply from, to, or between all points within a named region; for example, a county, township, parish or province, such region must be identified with the state, province, and country in which the region is located.

(c) Contain a contract of affreightment clearly setting forth through liability which is consistent with the holding out provided by the application of the rates and conditions of the tariff.

(d) In the case of joint through intermodal rates, the names of all participating common carriers and a clear description of the services performed by such participating carriers which are included in the through rates. Points served by each participating carrier must be so specified.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-5518 Filed 2-29-84; 8:45 am]

BILLING CODE 6730-01-M

Notices

Federal Register
Vol. 49, No. 42
Thursday, March 1, 1984

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

ADVISORY COUNCIL ON HISTORIC PRESERVATION

California Desert Conservation Area Plan; Programmatic Memorandum of Agreement

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: This notice announces that the Advisory Council on Historic Preservation is consulting with the California State Office of the Bureau of Land Management to amend the existing Programmatic Memorandum of Agreement regarding the existing California Desert Conservation Area Plan.

Comments due: Comments must be submitted on or before April 2, 1984.

ADDRESS: Executive Director, Advisory Council on Historic Preservation, The Old Post Office Building, 1100 Pennsylvania Avenue NW., Suite 809, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Copies of the Agreement and additional information are available from Dr. Thomas King, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 786-0505.

Dated: February 27, 1984.

Frank L. Suman,

Acting Executive Director.

[FR Doc. 84-5560 Filed 2-29-84; 8:45 am]

BILLING CODE 4310-10-M

Protection of Historic and Cultural Properties

AGENCY: Advisory Council on Historic Preservation (ACHP).

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with § 800.6(d)(3) of the regulations of the Advisory Council on Historic Preservation, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that an unassembled meeting of the Council will be convened March 21, 1984, through March 28, 1984, to consider the proposed construction and maintenance of a coal loading/unloading facility at Ohio River mile 477.3, Anderson Ferry, Hamilton County, Ohio. It has been determined that this undertaking, for which the Corps of Engineers has been requested to provide a permit, will adversely affect Anderson Ferry, a property included in the National Register of Historic Places.

Pursuant to § 800.6(d)(2) of the Council's regulations, the Chairman of the Council decided on February 17, 1984, that the Council should consider this project in accordance with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f, as amended).

The Council was established by the National Historic Preservation Act to advise the President and Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Secretary of the Interior, the Architect of the Capitol, the Secretary of Agriculture, and the heads of four other Federal agencies appointed by the President, one Governor and one mayor appointed by the President, the President of the National Conference of State Historic Preservation Officers, the Chairman of the National Trust for Historic Preservation, and seven private citizens appointed by the President.

The Council will consider the case in an unassembled meeting, in accordance with its operating procedures. Written statements from concerned parties are invited and will be provided to the members for their consideration. Written statements should be submitted to the Executive Director of the Council by March 16, 1984. For additional information concerning the meeting, or to submit statements, please contact the Executive Director, Advisory Council on Historic Preservation, Suite 809, The Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC 20004 (202-786-0505).

Dated: February 27, 1984.

Frank L. Suman,

Acting Executive Director.

[FR Doc. 84-5561 Filed 2-29-84; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1984-Crop Peanut Program

AGENCY: Commodity Credit Corporation—USDA.

ACTION: Notice of Proposed Determination—1984-Crop Peanut Price Support Differentials.

SUMMARY: This notice of proposed determination sets forth the differentials to be used in determining specific price support rates for the 1984-crop of quota and additional peanuts. The differentials reflect adjustments for differences in type, quality, location and other factors. These adjusted support rates apply to warehouse-stored loans, farm-stored loans and purchases. The adjustments are authorized by Section 403 of the Agricultural Act of 1949 ("The 1949 Act").

DATE: Comments must be received on or before April 2, 1984, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Solomon J. Whitfield, Tobacco and Peanuts Division, ASCS, USDA, Room 5727 South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447-5754. A Draft Impact Analysis describing options considered in developing this proposed determination and the impact of implementing such options is available upon request from Mr. Whitfield.

SUPPLEMENTARY INFORMATION: This notice of proposed determination has been reviewed under USDA procedures in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major". It has been determined that this proposed determination will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity,

innovation or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this proposed determination applies are: Commodity Loans and Purchases, 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of proposed determination since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

In order to allow for adequate review of the comments and a final determination to be published prior to the April 15 deadline for contracts for additional peanuts, it has been determined that the comment period will be limited to 30 days.

The 1984-Crop Peanut Loan and Purchase program is authorized by the Agricultural Act of 1949, as amended (hereinafter referred to as the "Act"), and the CCC Charter Act, as amended. Pursuant to section 108A of the Act, average price support levels are announced for each crop year for quota and additional peanuts. Quota peanuts are eligible peanuts marketed within a quota held by the producers under the terms of the Agricultural Adjustment Act of 1938. Section 403 of the Act provides that adjustments may be made in these support levels for type, quality, location and other factors. Section 403 further provides that in making such adjustments, taking into account the expected incidences of those factors on which adjustments are made, the average level of support shall, to the extent practicable, be equal to the support level announced by the Secretary for the crop year involved, (i.e., the support levels announced pursuant to section 108A.

A ton of farmers stock peanuts will normally include a large, but bariable, proportion of high quality edible peanuts referred to as sound mature kernels (SMK) and sound splits (SS), as well as smaller quantities of lower quality loose shelled kernels (LSK), other kernels (OK) and damaged kernels (DK). Under the differentials applicable to the 1983 and preceding crop years, the value of any ton of farmers stock peanuts has been determined on the basis of the quantity and mix of these kernel values, plus a premium for extra large kernels (ELK) in the case of Virginia-type peanuts, and discounts for such factors as excess foreign material, split kernels and damaged kernels.

A Notice of Intent to Review and Request for Comments regarding adjustments in the levels of price support for the 1984-crop of peanuts was published in the Federal Register on October 19, 1983 (48 FR 48471). The notice alerted the public of CCC's intent to review the 1984 peanut crop price support differentials and requested interested parties to provide the Department with recommendations regarding the method of calculating differentials, particularly with respect to the effect of the differentials on the market relationships between the four basic peanut types (Virginia-type peanuts, Runner-type peanuts, Spanish-type peanuts and Valencias). There were 11 commenters responding to the October 19, 1983, notice: two peanut sheller/handler organizations, eight grower organizations, and one interested consumer. Many of the commenters made more than one suggestion for changing the peanut differentials for the 1984-crop.

Two commenters suggested that the differentials utilized in previous years be changed to make the SMK value uniform for all peanut types; i.e., uniform for Virginia, Runner, Spanish and Valencia-type peanuts. Under the differentials which applied to the 1983-crop and all preceding crops since 1976, the base SMK value for Virginia-type peanuts has been two-percent higher than the SMK value for Runner-type peanuts. For Spanish-type peanuts, the base SMK value has been one-half percent higher than the Runner SMK value. The Valencia SMK value has not been established as a proportion of any other SMK value. However, the agency has followed the practice of establishing the per ton price for Valencias at the same level as the per ton price for Virginia-type peanuts.

Five commenters suggested that a uniform excess moisture level be used for all peanut types and areas. Program regulations contained in 7 CFR Parts 729 and 1446 provide for a deduction for excess moisture for peanuts in the Virginia-Carolina area and in other areas outside the traditional peanut growing regions of the Southeastern and Southwestern areas, as defined in those regulations, when the moisture level exceeds eight percent of the gross weight of the peanuts. These deductions are made for peanuts in the traditional peanut growing regions of the Southeastern and Southwestern areas when the moisture level exceeds seven percent of gross weight. Two commenters recommended a uniform level for excess moisture of eight percent. One commenter suggested that the excess moisture level be made uniform at seven percent. Two commenters suggested a uniform level for excess moisture of either seven or eight-percent, but expressed no preference for one over the other.

Two commenters suggested that the premium for Virginia-type ELKs be reduced from the present 45 cents to 30 cents for each percentage of ELKs in a farmers stock ton. One of the two commenters suggested that the premium for Virginia-type ELKs be limited to a maximum percentage of the particular peanuts offered for price support, which would mean that the premium would not be paid for ELKs in a ton above a certain percentage. The commenter making this suggestion recommended a maximum percentage level of 31.75 percent. One commenter recommended lowering the ELK premium but did not specify the level to which it should be reduced. Four commenters recommended continuation of the present premium of 45 cents for each percentage of ELK.

In estimating the expected incidence of quality factors for the 1983-crop and the crops of the immediately preceding years, a five-year average was used except that 1980-crop data was excluded from these calculations due to the drought that year. One commenter suggests changing from a five-year average to a three-year average for estimating the expected incidence of quality factors. Four commenters recommended continuing the use of five-year averages, but two of the four recommended that both 1980 and 1983-crop data not be used due to poor crop conditions in those crop years.

Three commenters supported full continuation for the 1984-crop of the method used to calculate 1983-crop peanut price support differentials.

One commenter recommended elimination of the peanut price support program.

The commenters recommending changes in the differentials suggested that such changes are needed to give all peanut types fair and equitable opportunities in the marketplace.

It is proposed with respect to the averaging question that the statistical method used to project expected incidences of quality factors in the 1984-crop remain a five-year average for all quality factors, except for Virginia-type ELKs. The differentials proposed in this notice have been calculated on that basis. For the 1984-crop, it is proposed that a three-year average be used to project the occurrence of ELKs to more accurately project the actual occurrence

of these kernels in a ton of Virginia-type peanuts. If a three-year average is adopted for the 1984-crop, it is the current intent of the agency that the base years would be increased each year by one-year for future crop-years until the base is once again at five-years. For all five-year averages used in calculating the differentials proposed in this notice, data from the 1980-crop has been excluded because of drought conditions. Drought conditions in 1983 were not as widespread and the inclusion of data from that crop year would not in the view of the agency distort quality averages. For that reason, 1983-crop data has been included in the averages.

The proposed determination to use a three-year average for estimating 1984-crop Virginia-type ELKs is based on statistical data that shows an increase in the percent of ELKs in Virginia-type peanuts which is apparently due, at least in part, to increased plantings within the last two years of new varieties of Virginia-type peanuts which tend to produce greater quantities of large kernels.

In 1981, CCC, using a five-year average, projected the occurrence of ELK percent in a farmers stock ton of Virginia-type peanuts would be 32.00 percent. The actual occurrence was 30.76 percent. Using the same five-year averaging method for 1982, CCC projected that the number of ELKs in a ton of Virginia-type peanuts would be 31.50 percent. However, the actual occurrence for 1982 was 36.79 percent, substantially above the estimate. For the 1983-crop, using a five-year average, the expected percentage of ELKs in a ton of Virginia-type peanuts was 31.75 percent. However, preliminary data indicates that the actual occurrence of ELKs in a ton of Virginia-type peanuts in 1983 is 32.21 percent. This difference might have been greater but for dry weather conditions in 1983 in the Virginia-Carolina area. In view of the incidence of ELKs in the past two crop years and the reported increase in the plantings of large kernel varieties, it appears a three-year average would more accurately estimate 1984-crop ELKs of Virginia-type peanuts. A three-year average projects an average of 33.25 percent ELKs for 1984-crop Virginia-type peanuts. A five-year average projects an expected ELK percentage of 31.88 percent.

The current method for determining the value of a farmers stock ton of Virginia-type peanuts allows a price support premium on 100 percent of ELKs. Statistical data shows that not only is the actual occurrence of the percentage of ELKs in a ton of Virginia-type peanuts above the projected level, but also that 10.88 percent of the Virginia-type peanuts delivered in 1981, had ELKs in the 40–45 percentage range. Further, the quantity of peanuts in that range for the 1982-crop had increased to 16.89 percent. Preliminary data for the 1983-crop indicates the quantity of peanuts in that range may be 14.63 percent, although the production of Virginia-type peanuts was significantly impacted by dry weather. Such an upward trend in the supply of ELKs without a downward adjustment in the ELK premium could cause CCC to support these kernels in excess of their market value in relation to other types of peanuts.

In view of the expected increased incidence of Virginia-type ELKs, it is proposed that, in addition to the adjustment in the manner of calculating the expected incidence of ELKs, the price support premium for ELKs be reduced from 45 cents to 35 cents per percent of ELKs in a ton of farmers stock Virginia-type peanuts.

Those in favor of changing the differentials argue that the differentials operate unfairly to the disadvantage of Virginia-type peanuts in competition for the domestic edible market. A reduction in the ELK premium to 35 cents would effectively reduce the net support price of an average ton of Virginia-type peanuts. It does not currently appear that proposing a more pronounced and potentially disruptive change in the differentials is warranted at this time. However, the agency currently intends to propose a change in the regulations contained in 7 CFR Parts 729 and 1446 to make the deduction for excess moisture uniform for peanuts in all areas. Such a change will be set forth in a separate notice of proposed rulemaking. A reduction in the ELK premium has been proposed rather than a cap on the percentage of ELK's on which the premium will be paid because of the possible inequitable effect on producers should a cap be implemented.

The single comment directed at the elimination of the peanut price support program is outside the scope of this Notice of Proposed Determination.

Unless otherwise indicated, the basic rates and discounts applicable to warehouse storage loans also apply to farm-stored loans and purchases. The entire 1984-crop proposed schedule of adjustments is set forth below. The proposed schedule is based on the minimum national average quota price support level of $550 per ton and will be adjusted should the 1984 quota support be announced at a level higher than the minimum level. A notice of proposed determination regarding the national average quota and additional peanut support levels was published in the Federal Register on January 12, 1984 (49 FR 1543). The support value of additional peanuts is proposed to be determined by multiplying what would have been the quota value for such peanuts by a factor which is equal to the ratio of the 1984 national average support price per ton for quota peanuts to the 1984 national average support price per ton for additional peanuts.

Proposed Determination

Accordingly, CCC hereby proposes that the differentials to be used in determining specific price support rates for 1984-crop peanuts shall be as follows:

(a) *Average 1984 Support Values for Quota Peanuts by Type Per Average Grade Ton of Peanuts.*

(1) *Support Value for Warehouse-Stored Peanuts:*

Type	Per average grade ton
Virginia	$537.30
Runner	555.13
Spanish	532.57
Valencia:	
Southwest area—suitable for cleaning and roasting	537.30
Southwest area—not suitable for cleaning and roasting	532.57
Areas other than Southwest	532.57

(2) *Support Value for Farm-Stored Peanuts:*

Type	Grade ton
Virginia	$537
Runner	555
Spanish	533
Valencia:	
Southwest Area	537
Areas Other Than Southwest	533

(b) *Calculation of Support Prices for Quota Peanuts by Type and Quality.*

The support price per ton for 1984-crop quota peanuts of a particular type and quality shall be calculated on the basis of the following rates, premiums, and discounts (with no value assigned to damaged kernels), except that the minimum support value for any quota lot of eligible peanuts of any type shall be 8 cents per pound of kernels in the lot:

(1) *Kernel value per ton excluding loose shelled kernels.*

(i) The price per ton for each percent of sound mature and sound split kernels shall be:

Type	Per percent
Virginia	$7.979
Runner	7.823
Spanish	7.852
Valencia:	
Southwest area—suitable for cleaning and roasting	8.064
Southwest area—not suitable for cleaning and roasting	7.862
Areas other than Southwest	7.852

(ii) The price per ton for each percent of other kernels shall be: All types, per percent, $1.40.

(iii) The premium per ton for each percent of extra large kernels for Virginia-type peanuts shall be $0.35. However, no premium for extra large kernels shall be applicable to any ton of such peanuts containing more than four-percent damaged kernels.

(2) *Price of Loose Shelled Kernels Per Pound.* The price for each pound of loose shelled kernels shall be: All types, per pound, $0.07.

(3) *Foreign material discount.* For all types of peanuts, the discount per ton for foreign material shall be as follows:

Percent	Discount
0 to 4	0
5	$1.00
6	2.00
7	3.00
8	4.00
9	5.00
10	6.00
11	7.00
12	8.50
13	10.00
14	11.50
15	13.00
16 and over	(1)

[1] For each full percent in excess of 15 percent deduct an additional $2.

(4) *Sound split kernel discount.* For all types of peanuts, the discount per ton for sound split kernels shall be as follows:

Percent	Discount
1 through 4	0
5	$1.00
6	1.60
7 and over	(1)

[1] For each full percent in excess of 6 percent deduct an additional $0.80.

(5) *Damaged kernel discount.*

(i) For all types of peanuts, the discount per ton for damaged kernels shall be as follows:

Percent	Discount
1	0
2	3.40
3	7.00
4	11.00
5	25.00
6	40.00
7	60.00
8 to 9	80.00
10 and over	100.00

(ii) Notwithstanding the above discount schedule, the damaged kernel discount for Segregation 2 peanuts transferred from additional to quota loan pools shall not exceed $25 per ton.

(6) *Adjustment for peanuts sampled with other than a pneumatic sampler.* The support price per ton for Virginia-type peanuts sampled with other than a pneumatic sampler shall be reduced by $0.10 per every percentage point of sound mature and sound split kernels.

(7) *Mixed type discount.* Individual lots of farmer stock peanuts containing mixtures of two or more types in which there is less than 90 percent of any one type will be supported at a rate which is $10 per ton less than the support rate available to the type in the mixture having the lowest support rate.

(8) *Adjustments for Location Where Peanuts are not Customarily Shelled or Crushed.*

(i) Farmers stock peanuts on which price support is made available in the States specified below shall be discounted as follows:

State	Per ton
Arizona	$25.00
Arkansas	10.00
California	33.00
Louisiana	7.00
Mississippi	10.00
Missouri	10.00
Tennessee	25.00

(ii) Farmers stock peanuts on which price support is made available in Puerto Rico and all other States, territories and possessions of the United States (excluding the States specified in paragraph (8)(i) and Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia) shall be discounted at $40.00 per ton.

(9) *Virginia Type Peanuts.* Virginia-type peanuts, to receive peanut price support as Virginia-type, must contain 40 percent or more "fancy" size peanuts, as determined by a presizer with the rollers set at 34/64 inch space. Virginia-type peanuts so determined to contain less than 40 percent "fancy" size peanuts will be supported (but not classed) as though they were Runner-type.

(10) *Discount for Aspergillus Flavus-Mold (Segregation 3 peanuts).* There will be no discount applied to Segragation 3 peanuts for Aspergillus flavus mold when such peanuts are placed under loan at the additional loan rate. Should such peanuts later be transferred to a quota loan pool under 7 CFR 1446.66, they will be discounted at the rate of $25 per net ton from the quota price support rate.

(c) *Calcualtion of Support Values for Additional Peanuts.* The support price per ton for 1984-crop additional peanuts of a particular type and quality shall be calculated by: (1) calculating the value that the peanuts would have had if the peanuts were quota peanuts and, (2) reducing that value by multiplying it by the factor obtained by dividing the national average support price per ton for 1984-crop additional peanuts by the national average support price per ton for 1984-crop quota peanuts.

Before making a final determination with respect to these matters, consideration will be given to any relevant data, views, recommendations or other comments which are submitted in writing within the comment period to the Director, Tobacco and Peanuts Division, ASCS–USDA. All written submissions made pursuant to this Notice will be made available for inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 5750-South Building.

Signed At Washington, D.C. on February 28, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84-5713 Filed 2-29-84; 8:45 am]

BILLING CODE 3410-05-M

Federal Grain Inspection Service

Designation Renewal of Alton Grain Inspection Department (IL), Grand Forks Grain Inspection Department (ND), and John R. McCrea Agency (IA)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Alton Grain Inspection Department, Grand Forks Grain Inspection Department, and John R. McCrea Agency as official agencies responsible for providing offficial services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act).

EFFECTIVE DATE: April 1, 1984.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule orregulation as defined in Executive Order 12291 and Department Regulation 1512-1; therefore, the Executive Order and Department Regulation do not apply to this action.

The September 30, 1983, issue of the Federal Register (48 FR 44869) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Alton's Grand Fork's and McCrea's designations terminate on March 31, 1984, and requesting applications for designation as the agency to provide official services within each specified geographic area. Applications were to be postmarked by October 31, 1983.

Alton, Grand Forks, and McCrea were the only applicants for each respective designation.

FGIS announced the names of these applicants and requested comments on same in the December 1, 1983, issue of the Federal Register (48 FR 54258). Comments were to be postmarked by January 16, 1984.

Two favorable comments were received regarding the designation renewal of Alton; no comments were received regarding the designation renewal of Grand Forks and McCrea.

FGIS has evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and in accordance with Section 7(f)(1)(B), has determined that Alton, Grand Forks, and McCrea are able to provide official services in the respective geographic areas for which their designations are being renewed. Each assigned area is the entire geographic area, as previously described in the September 30 Federal Register issue.

Effective April 1, 1984, and terminating March 31, 1987, the responsibility for providing official inspection services in their respective specified geographic areas are assigned to Alton, Grand Forks, and McCrea.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency to conduct official inspection services and where the agency and one or more of its licensed inspectors are located. In addition to the specified services points within the assigned geographic area, an agency will provide official services not requiring a licensed inspector to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of the specified service points. Interested persons also may obtain a list of the specified service points by contacting the agencies at the following address:

Alton Grain Inspection Department, 145 West Broadway, Alton, IL 62002

Grand Forks Grain Inspection Department, 1823 State Mill Road, P.O. Box 639, Grand Forks, ND 58201

John R. McCrea Agency, P.O. Box 166, Clinton, IA 52732

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: February 17, 1984.

J. T. Abshier,

Director, 3 Compliance Division.

[FR Doc. 84-5449 Filed 2-29-84; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Areas Currently Assigned to R. A. Gray Grain Inspection Service, Inc. (KY) and North Dakota Grain Inspection Service, Inc. (ND)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the areas currently assigned to R.A. Gray Grain Inspection Service, Inc., and North Dakota Grain Inspection Service, Inc.

DATE: Comments to be postmarked on or before April 16, 1984.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Department Regulation 1512-1; therefore, the Executive Order and Department Regulation do not apply to this action.

The January 3, 1984, issue of the Federal Register (49 FR 128) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the areas currently assigned to the official agencies. Applications were to be postmarked by February 2, 1984.

R.A. Gray Grain Inspection Service, Inc., and North Dakota Grain Inspection Service, Inc., the only applicants for each respective designation, requested designation for the entire geographic area currently assigned to each of those agencies.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their comments concerning the applicants for designation. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice, and postmarked not later than April 16, 1984.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the Federal Register, and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: February 17, 1984.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 84-5450 Filed 2-29-84; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Perform Official Services in the Geographic Areas Currently Assigned to Central Iowa Grain Inspection Service, Inc. (IA), Maine Department of Agriculture (ME), and Montana Department of Agriculture (MT)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), official agency designations shall terminate not later than triennially and may be renewed in accordance with the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to conduct official services in the geographic area currently assigned to each specified agency. The

official agencies are Central Iowa Grain Inspection Service, Inc., Maine Department of Agriculture, and Montana Department of Agriculture.

DATE: Applications to be postmarked on or before April 2, 1984.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Department Regulation 1512-1; therefore, the Executive Order and Department Regulation do not apply to this action.

Section 7(f)(1) of the act (7 U.S.C. 71 *et seq.*, at 79(f)(1)) specifies that the Administrator of the Federal Grain Inspection Service (FGIS) is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area. Central Iowa Grain Inspection Service, Inc. (Central Iowa), 125 S.E. 18th Street, P.O. Box 1562, Des Moines, IA 50306, was designated under the Act as an official agency for the performance of inspection functions on November 5, 1978. Maine Department of Agriculture (Maine), State Office Building, Augusta, ME 04330, was designated under the Act as an official agency for the performance of inspection functions on October 31, 1978. Montana Department of Agriculture, P.O. Box 1397, Great Falls, MT 59403, was designated under the Act as an official agency for the performance of inspection functions on October 25, 1978.

The agencies' designations will terminate on August 31, 1984. This date reflects administrative extensions of official agency designations, as discussed in the July 16, 1979, issue of the Federal Register. (44 FR 41275). Section 7(g)(1) of the Act states generally that official agencies' designations shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Central Iowa, in the State of Iowa, pursuant to Section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the following:

Bounded on the North by U.S. Route 30 east to N44; N44 south to E53; E53 east to U.S. Route 30; U.S. Route 30 east to the Boone County line; the western Boone County line north to E18; E18 east to U.S. Route 169; U.S. Route 169 north to the Boone County line; the northern Boone County line; the western Hamilton County line north to U.S. Route 20; U.S. Route 20 east to R38; R38 north to the Hamilton County line; the northern Hamilton County line east to Interstate 35; Interstate 35 northeast to C55; C55 east to S41; S41 north to State Route 3; State Route 3 east to U.S. Route 65; U.S. Route 65 north to C25; C25 east to S56; S56 north to C23; C23 east to T47; T47 south to C33; C33 east to T64; T64 north to B60; B60 east to U.S. Route 218; U.S. Route 218 south to State Route 3; State Route 3 west to the Butler County line; the eastern Butler County line; the northern Blackhawk County line east to V49;

Bounded on the East by V49 south to State Route 297; State Route 297 south to D38; D38 west to State Route 21; State Route 21 south to State Route 8; State Route 8 west to U.S. Route 63; U.S. Route 63 south to Interstate 80; Interstate 80 east to the Poweshiek County line; the eastern Poweshiek, Mahaska, Monroe, and Appanoose County lines;

Bounded on the South by the southern Appanoose, Wayne, Decatur, Ringgold, and Taylor County lines;

Bounded on the West by the western Taylor County line; the southern Montgomery County line west to State Route 48; State Route 48 north to M47; M47 north to the Montgomery County line; the northern Montgomery County line; the western Cass and Audubon County lines; the northern Audubon County line east to U.S. Route 71; U.S. Route 71 north to U.S. Route 30.

The following locations, outside of the foregoing contiguous geographic area, are presently assigned to Central Iowa and are part of this geographic area assignment:

1. Farmers Co-op Elevator Company, Chapin, Franklin County;
2. Hampton Farmers Co-op Company, Hampton, Franklin County;
3. Nashua Equity Co-op, Nashua, Clinton County;
4. Plainfield Co-op, Plainfield, Bremer County; and
5. Farmers Community Co-op, Inc., Rockwell, Cerro Gordo County.

Exceptions to the described geographic area are the following locations situated inside Central Iowa's area which have been and will continue to be serviced by the following official agencies:

1. Farmers Co-op Elevator, Boxholm, Boone County, to be serviced by A. V. Tischer and Son, Inc.;
2. Juergens Produce and Seed and Farmers Grain and Lumber Company, Carroll, Carroll County, to be serviced by Fremont Grain Inspection Department, Inc.; and
3. Murren Grain, Elliot, Montgomery County; and Hemphill Feed & Grain and Hansen Feed & Grain, Griswold, Cass County, to be serviced by Omaha Grain Inspection Service, Inc.

The geographic area presently assigned to Maine, pursuant to Section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the entire State of Maine.

The geographic area presently assigned to Montana, pursuant to Section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the entire State of Montana.

Interested parties, including Central Iowa, Maine, and Montana, are hereby given opportunity to apply for designation as the official agency to perform the official services in the geographic areas, as specified above, under the provisions of Section 7(f) of the Act and section 800.196(b) of the regulations issued thereunder. Designations in the specified geographic areas are for the period beginning September 1, 1984, and ending August 31, 1987. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for appropriate forms and information.

Applications submitted and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: February 17, 1984.

J. T. Abshier,
Director, Compliance Division.

[FR Doc. 84-5451 Filed 2-29-84; 8:45 am]
BILLING CODE 3410-EN-M

Food Safety and Inspection Service

[Docket No. 84-002]

Industry Notification of Consumer Complaints

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Food Safety and Inspection Service's (FSIS) policy regarding industry notification of consumer complaints.

FOR FURTHER INFORMATION CONTACT: Patricia Drayne, Director, Public Awareness, Information and Legislative Affairs, FSIS, USDA, Washington, DC 20250 447-9351.

SUPPLEMENTARY INFORMATION: The FSIS handles questions and complaints from the public about the safety, wholesomeness, and labeling of meat and poultry products. The questions and complaints received are referred to appropriate Agency personnel for handling.

In the future, FSIS will also notify the appropriate members of the meat and poultry industry (packers, processors, and/or retailers) of complaints received about meat and poultry products. Notification will include a standard cover letter with a Complaint Referral form. This procedure will provide useful and timely information to industry about consumer problems, and will also provide more responsive service to consumers. Permission will be sought from the consumer to notify industry and to include his/her name and address with the report of the complaint. If the consumer does not respond to the request for permission, or does not wish to be identified, FSIS will withhold the name and address when forwarding the complaint. This policy becomes effective March 1, 1984.

Done at Washington, DC on: February 24, 1984.

Donald L. Houston,

Administrator.

[FR Doc. 84-5519 Filed 2-29-84; 8:45 am]

BILLING CODE 3410-DM-M

Forest Service

Pacific Crest National Scenic Trail Advisory Council; Meeting

The Pacific Crest National Scenic Trail Advisory Council will meet on April 11, 12, and 13, 1984, at the Sea Point Hotel in San Diego, California. The meeting will begin on April 11, 1984, at 1:30 p.m., followed on April 12, 1984, at 8:00 a.m. with a field trip to view the Pacific Crest Trail, trail facilities, and issues linked with the trail. The business session will continue at 8:00 a.m. on April 13 at the Sea Point Hotel.

The purpose of the meeting is to provide recommendations for the Secretary of Agriculture on broad questions of policy, programs, and procedures affecting the Pacific Crest Trail. The meeting will include a review of trail completion status, discussion for improving volunteer support organizations, review of trail relocations, Pacific Crest Trail sub-names policy, and amount of use on the trail.

The meeting will be open to the public. Persons who wish additional information should contact Dick Benjamin, Recreation Staff Director, Pacific Southwest Region, Forest Service, 630 Sansome Street, San Francisco, California 94111, phone (415) 556-6983.

Dated: February 3, 1984.

Zane G. Smith, Jr.,

Chairman.

[FR Doc. 84-5532 Filed 2-29-84; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Donley Critical Area Treatment RC&D Measure, Texas; Finding of No Significant Impact

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service, Guidelines, (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture gives notice that an environmental impact statement is not being prepared for the Donley Critical Area Treatment RC&D Measure, Donley County, Texas.

FOR FURTHER INFORMATION CONTACT: Billy C. Griffin, State Conservationist, Soil Conservation Service, W. R. Poage Federal Building, 101 South Main, Temple, Texas 76501-7682, telephone 817-774-1214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Billy C. Griffin, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment on 30 eroded areas in Donley County. Planned works of improvements include installing grade stabilization structures, constructing diversion terraces above eroded areas, shaping eroded areas, vegetating treated areas, and fencing areas where needed to protect vegetation. This will involve 30 acres of rangeland, 4 acres of cropland, and 101 acres of gullied land.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Billy C. Griffin.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resources Conservation and Development Program. Executive Order 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: February 21, 1984.

Billy C. Griffin,

State Conservationist.

[FR Doc. 84-5570 Filed 2-29-84; 8:45 am]

BILLING CODE 3410-16-M

Kalopa Critical Area Treatment Measure, Hawaii; Finding of No Significant Impact

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Mr. Francis C. H. Lum, State Conservationist, Soil Conservation Service, Prince Kuhio Federal Building, Room 4316, 300 Ala Moana Blvd., Honolulu, Hawaii, 96850, telephone (808) 546-3165.

Notice: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the

Kalopa Critical Area Treatment Measure, County of Hawaii, Hawaii.

The environmental assessment of this Federal action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Francis C. H. Lum, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for the installation of structural measures to stabilize a critically eroding roadside ditch and an earth diversion. The planned works of improvement includes about 1,950 feet of concrete rock masonry channels and three 48-inch culverts.

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Francis C. H. Lum, State Conservationist, Soil Conservation Service, Prince Kuhio Federal Building, Room 4316, 300 Ala Moana Blvd., Honolulu, Hawaii 96850, telephone (808) 546-3165. A combined environmental assessment and the Notice of a Finding of No Significant Impact have been prepared and sent to various Federal, State, and local agenices and interested parties. A limited number of copies of the Notice of a Finding of No Significant Impact are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Public Law 87-703, 16 U.S.C. 590 a-f,q)

Dated: February 17, 1984.

Francis C. H. Lum,

State Conservationist.

[FR Doc. 84-5504 Filed 2-29-84; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Order 84-2-96; Docket 41297]

Flying Tiger Line Inc.; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order To Show Cause: Order 84-2-96, Docket 41297.

SUMMARY: The Board has tentatively decided to issue certificate authority to the Flying Tiger Line Inc. authorizing it to engage in foreign air transportation of cargo between the United States and Australia.

Objections: All interested persons having objections to the Board's tentative findings and conclusions that this action be taken, as described in the order cited above, shall, NO LATER THAN March 19, 1984, file a statement of such objections with the Civil Aeronautics Board (20 copies, addressed to Docket 41297, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428) and mail copies to the Flying Tiger Line Inc. the Departments of State and Transportation.

A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Board will issue an order which will make final the Board's tentative findings and conclusions and issue a certificate authorizing Flying Tiger to engage in foreign air transportation of property and mail between the United States and Australia.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5432. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Don Hainbach, (202) 673-5035, Bureau of International Aviation, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: February 23, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-5599 Filed 2-29-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41998]

Puerto Rico-Venezuela Service Proceeding; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter will be held on March 30, 1984 at 9:30 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned.

Dated at Washington, D.C., February 23, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84-5600 Filed 2-29-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41996]

Silvas Air Lines Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-mentioned matter will be held on March 12, 1984, at 10:00 a.m. (local time) in Hearing Room No. 3, Lower Level, 2120 L Street, NW., Washington, D.C., before the administrative law judge.

Dated at Washington, D.C., February 24, 1984.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 84-5601 Filed 2-29-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Methodist Hospital of Indiana, Inc.; Decision on Application for Duty-Free Entry of Scientific Instrument

Correction

In FR Doc. 84-5001, appearing on page 6962, in the issue of Friday, February 24, 1984, make the following corrections.

In the second column, first line, "Docket No.: 84-333" should read "Docket No.: 83-333."

BILLING CODE 1505-01-M

Antidumping; Final Determination of Sales at Less Than Fair Value; Color Television Receivers From Korea

AGENCY: Import Administration, International Trade Administration; Commerce.

ACTION: Notice of Final Determination of Sales at Less than Fair Value.

SUMMARY: We have determined that color television reveivers from Korea are being sold in the United States at less than fair value. The United States International Trade Commission ("ITC") will determine within 45 days of the publication of this notice whether these imports are materially injuring, or are threatening to materially injure, a United States industry.

We have excluded Korea Electronics Co., Ltd. from this final determination.

EFFECTIVE DATE: March 1, 1984.

FOR FURTHER INFORMATION CONTACT: David R. Chapman, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW.,

Washington, D.C. 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that color television receivers from Korea are being sold in the United States at less than fair value, as provided for in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) ("the Act").

We have found no sales at less than fair value by Korea Electronics Co., Ltd. Therefore, we are excluding merchandise manufactured and exported by this firm from our final determination.

We found that the fair value of color television receivers from Korea exceeded the United States price on approximately 79 percent of all sales of this product. The margins ranged from 0.03 percent to 142.35 percent. The overall weighted average margin on all sales compared in 14.64 percent.

Case History

On May 2, 1983, we received a petition from the Independent Radionic Workers of America, the International Brotherhood of Electrical Workers, the International Union of Electrical, Radio & Machine Workers, and the Industrial Union Department, AFL-CIO, on behalf of the U.S. industry producing color television receivers. In accordance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that color television receivers from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are materially injuring, or threatening to materially injure, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds to initiate an antidumping investigation. We notified the ITC of our action and initiated an investigation on May 27, 1983 (34 FR 23879-23880). The ITC subsequently found, on June 16, 1983, that there is a reasonable indication that imports of color television receivers are materially injuring, or are threatening to materially injure, a U.S. industry.

General Electric Company and Zenith Radio Corporation entered the proceeding as interested parties.

On September 20, 1983, petitioners amended the petition to allege that critical circumstances, as defined in section 733(e) of the Act, exist.

On October 19, 1983, we preliminarily determined that color television receivers from Korea were being sold, or were likely to be sold, in the United States at less than fair value (48 FR 48487). We also preliminarily determined that critical circumstances did not exist. The notice stated that, if the investigation proceeded normally, we would make a final determination by December 23, 1983.

From October 17-30. 1983, we verified the responses of the manufacturers in Korea and, in the period October 10-November 17, 1983, we verified the response data pertaining to sales in the United States by subsidiaries of three of the manufacturers.

After reviewing requests from two of the manufacturers, together representing approximately 85 percent of the exports subject to the investigation, we postponed our final determination until no later than February 23, 1984. We rescheduled and held our hearing on January 13, 1984. We also provided for the submission of written views.

Scope of Investigation

The merchandise covered by this investigation is color television receivers, complete or incomplete. This investigation is intended to cover all color television receivers regardless of tariff classifications. The merchandise is currently classifiable under item numbers 685.1125, 685.1126, 685.1127, 685.1128, 685.1129, 685.1135, 685.1144, 685.1148, 685.1155, 685.1456, 685.1458, 685.1460, and 685.1463 of the Tariff Schedules of the United States Annotated.

The petition alleged that Samsung Electronics Co., Ltd., Gold Star Co., Ltd., and Taihan Electric Wire Co., Ltd., produce color television receivers for export to the United States. In addition to the companies named in the petition, we also examined sales by Korea Electronics Co., Ltd. ("KEC") and Anam Electronic Industrial Co., Ltd.

The five manufacturers under investigation accounted for virtually all known color television receivers exported from Korea to the United States during the period of the investigation.

The investigation covers the period from July 1, 1982 through March 31, 1983 for United States price transactions, and generally April 1, 1982 through March 31, 1983 for foreign market transactions

In the case of Taihan, we have used the best information available to establish its margin because the related United States subsidiary was unable or unwilling to support the expenses reported in the submission.

United States Price

As provided for in section 772 of the Act, we used the purchase price as the United States price for sales by Anam, KEC, and certain sales by Samsung and Gold Star because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We used exporter's sales price ("ESP") for other sales by Samsung and Gold Star.

We calculated purchase price based on the packed f.o.b. Korean port or plant price to unrelated purchasers in the United States. We made deductions from that price, where appropriate, for foreign inland freight, Korean customs clearing fees, forwarding expenses, wharfage expenses, export license fees, foreign brokerage, handling charges, and royalties.

We calculated ESP by deducting from the gross packed price to unrelated purchasers in the United States amounts for the following items, where appropriate: Foreign inland freight, Korean customs clearing fees, forwarding expenses, wharfage, export license fees. foreign brokerage, ocean freight, marine insurance, U.S. Customs duties, U.S. brokerage, U.S. inland freight, commissions to unrelated parties, warranty expenses, credit expenses, advertising expenses, royalties, discounts, rebates, and indirect selling expenses.

As provided for under section 772(d)(1)(B) of the Act, we added back to the U.S. price the amount of import duties and defense taxes on imported parts, rebated upon exportation of the color television receivers, which had been assessed upon importation of the materials used to produce the televisions. As for taxes rebated or not collected upon export, within the meaning of section 772(d)(1)(C) of the Act, we have made the adjustment by subtraction from home market price as best information available. (*See* Comments 1 and 2 below.)

For extensions of credit to customers, we have changed Departmental practice. (*See* Comment 10.)

We found during verification that Samsung had not reported sales of certain sets labelled "defective" in Samsung's books. For the purpose of this investigation, we disregarded these sales for comparison purposes. However, we deducted the "return loss" as an indirect selling expense. (*See* Comment 15.)

For Samsung, we also found at verification that records concerning rebates were unavailable for most of calendar year 1982. As best evidence, we have estimated the 1982 amounts by projecting backwards the amounts of rebates by customers accrued through October 1983.

Fair Value

In accordance with section 773 of the Act, we used home market prices to establish fair value for each of the companies under investigation (except Taihan) because sufficient quantities of such or similar merchandise were sold in Korea during the period of investigation to establish a basis for comparison.

We calculated the home market price by deducting from the gross, packed prices to unrelated customers the following items, where appropriate: Freight and discounts. We made adjustments, where appropriate, for differences in the physical characteristics of the merchandise, commissions and "rebates" to unrelated parties, packing costs, warranty expenses, royalties, credit expenses, advertising and sales promotion. In addition, in ESP comparisons, we deducted indirect selling expenses from the home market price but limited the deduction by the amount of the U.S. indirect selling expenses. We based adjustments for differences in physical characteristics, when allowed, on differences in costs of materials, labor, and variable factory overhead. We disregarded sales by all companies to Korean military PXs because we determined that they were not made in the ordinary course of trade.

As set forth below, in making adjustments to the fair value, we made several changes to the figures offered by respondents, either because the figures offered did not represent amounts calculated according to our usual practices, or because our verification of the claim indicated that another amount should be used.

For Gold Star and Samsung, we have made no adjustment for differences in physical characteristics. We found that differences in acquisition costs to Gold Star and Samsung for identical and similar parts were based on the destination of the finished product incorporating the parts, rather then on physical differences between the parts. Gold Star argued that the higher cost for parts used in home market sets was due to import duties and taxes included in the price from its local suppliers. However, the documentary evidence provided by Gold Star showed that the supplier price differential between parts ultimately exported and home market parts often exceeded the potential duties and taxes. Samsung argued that the duties had been double-counted, and therfore should be subtracted from claimed difference in merchandise. Alternatively, we should at least make a differences in merchandise adjustment for differences in the cabinets. However, Samsung could only estimate the portion of duty that may have been double-counted. As for Samsung's alternative request, lacking resolution of the supplier pricing question generally, we have decided that we should not allow an adjustment for Samsung for any portion of the claim.

For the home market extensions of credit for each company, we used our new methodology described in Comment 10.

For Gold Star, we disallowed a claimed adjustment for differences in levels of trade between the U.S. and Korean markets, a claimed adjustment for the value of its trademark in its home market, and a claimed adjustment for bad debt expenses incurred in the home market. (*See* Comments 8, 9, and 11.) We also found that Gold Star's transportation expense account included numerous entries expenses which were unrelated to delivery of color television receivers to customers. We could not determine the extent to which these other expenses overstated the inland freight claim. Therefore, we based Gold Star's inland freight adjustment on the experience of another manufacturer as the best information available.

For Gold Star and Samsung, we disallowed (either as direct or indirect selling expenses) claimed adjustments for the costs of free parts used in servicing. Gold Star's parts cost showed the same pricing defect as its difference in physical characteristics claim. Samsung was not able to demonstrate that its claim for parts costs was based on actual costs incurred. We have disallowed as direct selling expenses claims by Gold Star and Samsung that portions of their payments to service employees be considered warranty expenses directly related to sales. Samsung claimed all salaries and wages paid to its servicemen to be directly related. Gold Star claimed all payments to servicemen for work done outside an eight-hour workday (called "outcome pay") to be directly related. We consider regular payments of salaries and wages to be payments that would have been incurred regardless of whether individual warranty servicing had occurred. As for overtime, Gold Star did not demonstrate the portion of the overtime directly related to color televisions.

For Gold Star we disallowed as direct selling expenses certain costs incurred by the service departments that were not expenses incurred in actual warranty servicing or were found to be commingled with expenses not incurred in actual warranty servicing. For Gold Star we allowed as direct selling expenses fees paid to franchise stores which performed servicing on behalf of Gold Star. We also allowed as direct selling expenses the costs of small tools exhausted in service. For Samsung we disallowed all such expenses as direct selling adjustments because it was not able to tie the expenses into its corporate records at verification.

For all companies we disallowed as direct selling expenses the claims for adjustments for bad debts incurred in home market sales. (*See* Comment 8.)

Analysis of Comments Received

We invited interested parties to comment on the preliminary determination and verifications. We received the following comments.

Comment 1: Petitioners, General Electric, and Zenith all argue that the Department should adjust United States price (rather than the home market price) for the special consumption tax, defense tax, and value-added tax in accordance with section 772(d)(1)(C) of the Act, using as the tax basis the price of the exported merchandise.

Gold Star agreed that the Department should make the adjustment by addition to U.S. price, but claimed that the Department should add the full amount of taxes paid on the home market sales. Such a methodology, followed by the Department most recently in the preliminary results of its second administrative review of the antidumping finding on television receivers from Japan (48 FR 37506 (1983)), both complies with the Act and permits a fair comparison of equivalent prices. Petitioners' proposed methodology would have a multiplier effect on the margins. It would produce artificial dumping margins by including an increment of tax differential if there were an underlying pre-tax price differential between the export and home market sales. Respondents alternatively argue that, if the Department adopts petitioners' proposed methodology, then it must make a further circumstance of sale adjustment to the home market price for the disparity in the taxes computed on U.S. and on home market sales. Only by doing so will the Department achieve tax neutrality in making the adjustment.

Finally, Gold Star suggests that foreign exporters calculate prices by reference to our antidumping law and proceedings, and that it therefore would be unfair for the Department to act differently than in prior cases, unless a change were prospective only.

The U.S. industry counters that the method proposed by the exporters,

adding an amount equal to the tax imposed on the home market models, is contrary to the specific statutory language and suppresses the *ad valorem* dumping margins. The Department's optional approach (used in the preliminary determination), stripping all such taxes from the foreign market value (rather than adding them to U.S. price), also is contrary to the explicit statutory mandate and was rejected by Congress when it enacted the 1921 Antidumping Act.

Petitioners and General Electric argue that the multiplier effect is consistent with the remedial and deterrent purposes of the Act and imposes no additional burden on foreign producers who are willing to price fairly. They argue that objections to their methodology, based on *creating* dumping margins solely by applying the tax rate to prices prior to adjusting for differences in merchandise and circumstances of sale can be obviated by making supplemental adjustments to the foreign market value for the tax consequences of those differences. Respondents' proposal that there be a supplemental adjustment to foreign market value for the net difference between the actual home market tax paid and the tax addition to U.S. price, based on U.S. price would lower the absolute and/or percentage margins when compared with petitioners' methodology or the Department's optional methodology.

Because Congress specified exactly what the Department should do about tax remissions in a particular statutory adjustment provision. Zenith disagrees with the other parties and believes undoing that adjustment by resort to a supplemental adjustment under a more general adjustment provision (that for differences in circumstances of sale) violates the statutory construction rule of *in pari materia*.

Zenith argues that, assuming an economic rationale is needed to justify the multiplier effects, Congress concluded in 1974 that the old assumptions of full-forward shifting of indirect taxes and of trade neutrality of border tax adjustments were invalid. At that time, Congress tightened the tax adjustment provison, adding language which does not automatically neutralize the full amount of indirect taxes paid on home market sales.

The U.S. industry argues that the Department should not limit the application of petitioners' proposed methodology (with or without petitioners' supplemental adjustment to fair value) to prospective application, but should implement the statutory mandate in all current proceedings. There is no well-established agency practice for the adjustment of such taxes. Foreign producers could not have relied upon an approach other than petitioners' proposal because the statutory language is plain, and application of the proposed methodology would not require price adjustments to eliminate margins greater than another approach. Further these investigations are not subject to the Administrative Procedures Act. When the Department changes its approach on an issue, it need only articulate the reason the change. Respondents have no right to rely upon action taken in other proceedings as controlling the Department's action in these investigations. Finally, respondents are challenging the Department's authority to correct its previous statutorily erroneous calculations.

All sides view their diametrically opposed positions as consistent with the obligations of the United States under the General Agreement on Tariffs and Trade (GATT).

DOC Response: We agree that in section 772(d)(1)(C), Congress called for the *addition* of such taxes to the United States price, using the export sale in determining the tax basis. If there is a dumping margin in the total absence of taxes in either market, such an addition is not tax neutral. There is a multiplier effect on the margin. We believe that adding to the U.S. price the taxes on the home market sales, while neutralizing the multiplier effect on the absolute margin, serves to reduce the tax absent *ad valorem* margin. We also believe that, if there are differences in circumstances of sale or in merchandise, petitioners' proposed supplemental adjustment to foreign market value is needed to eliminate the possibility of creating margins solely through the tax adjustments. Such adjustment would reduce but not eliminate the multiplier effect if there were a pre-existing margin. We have not resolved the question of whether there should be an adjustment to foreign market value for the tax differential itself.

From our review of the Korean tax laws, we have been unable to establish what the appropriate tax basis would be for the exported merchandise. In the absence of knowing what the tax addition to U.S. price should be, we cannot calculate the differential. Therefore, as best information, we are making the adjustment by deducting these taxes from the price of the home market merchandise. Deducting from the home market price is the only tax neutral adjustment for both the *ad valorem* and absolute margin.

We agree with the U.S. industry that we need not apply changes in methodology only on a "prospective" basis. We disagree that the Department or Treasury before it, had a longstanding administrative practice of adding the amount of the home market tax on comparison merchandise to the U.S. price. That approach has been taken in some cases. In others, the tax has been stripped out of the home market prices or, particularly in cases of the separate line involving of a value added tax, not included in the home market calculation at all, with no addition made to the U.S. price.

Subtraction or non-inclusion is administratively convenient and achieves tax neutrality. In still other cases, the home market rax rate has been applied to the export price.

Comment 2: Petitioners and General Electric argue that the section 772(d)(1)(C) addition to U.S. price for indirect taxes should be limited to the amount of comparable taxes actually passed through to purchasers in the home market. The Act requires such a limitation. The taxes claimed in the home market by respondents were based on gross invoice price. However, the manufacturers ultimately received less than the gross invoice price from their customers because that price was reduced by subsequent discounts, rebates, and extensions of credit to customers. The fairest price comparison is to reduce the upward tax adjustment to U.S. price by the ratio of: (1) Taxes absorbed by foreign producers in their home market sales, rather than passed on to purchasers, to (2) all taxes paid on those sales.

Zenith agrees that the Act limits the United States tax adjustment. The amount added should be the amount of tax paid to the foreign government less all reductions in the taxable price that were given to the purchasers.

Anam and KEC argue that the three taxes are "included" in the price of televisions sold in the domestic market. The full amounts of the taxes are paid over to the Korean government on a quarterly basis. No further demonstration of inclusion is required. Any other interpretation would require the Department, in each instance of an after-sale discount or rebate, to calculate the amount of any commodity taxes allegedly absorbed by the manufacturer, based on the elasticity of demand for each model at the time of sale. They and Gold Star argue that there are only two possible "sources" for a rebate or discount: (1) Profit if the company is selling at or above the cost of production, or (2) retained earnings if

the company is operating at a loss. A rebate reduces profits, not the taxes which must be collected in full upon sale and remitted to the government.

Gold Star points out that petitioners' proposed cap to the adjustment to U.S. price is based on false assumptions and is administratively burdensome. Gold Star suggests that, if the Department accepts petitioners' passthrough limitation, the same theory would apply to other home market charges such as inland freight or commissions. Samsung states that the Department has historically recognized that indirect taxes are fully included in the price of merchandise sold above cost. The Department should continue to harmonize the antidumping and countervailing duty laws (as Congress intended) through its practice of presuming that indirect taxes are fully shifted forward. If the Department were to agree that indirect taxes are not fully passed through to the customer in the price of the merchandise, this would prevent a foreign producer from eliminating dumping margins by cutting home market prices through granting rebates or discounts. Finally, petitioners' approach to calculating tax incidence is misconceived. First, the rebate represents an absorption of other fixed and variable costs just as much as it represents an absorption of tax. Second, in the Korean context, where the tax has been imposed from the outset of television sales, it is impossible to relate the rebate to cost absorption without resorting to complex economic calculations which Congress could not have intended.

DOC Response: The differing treatment of direct vs. indirect taxes under GATT and U.S. law arose from the assumptions that indirect taxes were shifted fully forward to purchasers while direct taxes were absorbed by sellers. By the late 1960's, however, academic literature and U.S. government reports cast substantial doubt on the veracity of these assumptions. It is clear that the Congress in 1974 was aware of these doubts. In light of the public debate, it is only reasonable to conclude that the Congress, in its addition to section 772(d)(1)(C) of the "but only to the extent" language, intended that we measure absorption and limit the addition to the tax passed through. However, it is impossible to do so. The degree of shifting depends upon, among other things, the demand for the product, actions of the monetary authorities, the stage of the business cycle and the degree of competition among the producers of the product. In short, the Department would have to know the shape and position of the supply and demand curves for a product in the absence of tax to determine the price that would then exist. The Department would have to know these facts for each point in time at which a sale, chosen for comparison to a U.S. sale, occurred. The U.S. industry's proffered solutions to these questions fall far short of meeting these informational difficulties. In the absence of any meaningful proposal of how to measure absorption, the Department has presumed full pass through in this investigation.

Comment 3: Petitioners, General Electric, and Zenith argue that the statutory addition to U.S. Price, under section 772(d)(1)(B), for waived or remitted import duties should be limited to an amount equal to the import duties which burden the comparison home market merchandise. Failure to limit would frustrate the purposes of the Act by masking real margins of dumping.

Korean producers manufacture color picture tubes and other components in the home market, but not in quantities sufficient to meet their needs. As a result, the producers procure indentical parts from both domestic and foreign sources and once the parts have been procured must decide whether to use the imported parts and components in sets to be sold in the home market or in sets for exportation. The availability of duty drawback provides a great incentive to use imported parts in color television receivers produced for exportation. Even where the price of an imported component without duty is comparable to the price of a domestically produced part foreign producers may learn to favor the imported part in exported products if the duty drawback adjustment in the dumping calculation would allow them to mask dumping duties.

No implication should be read into the fact that Congress in 1974 amended what is now section 772(d)(1)(C) by limiting the upward adjustment to U.S. price for internal indirect taxes, but not limiting the duty drawback addition under section 772(d)(1)(B). The overall legislative history of these provisions makes it clear that Congress was attempting to create adjustments that would establish comparability between home market and export transactions and to prevent dumping margins generated solely as a result of the waiver or remission of taxes or duties. In 1974 Congress was attempting to limit the range of taxes for which an adjustment could be made and to limit the amount of the adjustment where the full amount of the tax is not passed through to home market customers. Congress never focused on the problem of the unequal burden of import duties on home market and exported merchandise. Had the Congress in 1974 focused upon the issue, it would have made explicit the limitation on the duty drawback adjustment that is implicit because of the purposes and objectives of the Act.

Gold Star argues that the Act requires that the adjustment be for the full amount of duty drawback received on exported televisons. The Act contains no words of limitation. Petitioners ignore the plain meaning of the section in marked contrast to their strict construction for other issues. Congress though adding limiting language in other secitons of the Act over the years left this section unchanged.

Anam and KEC also argue that the Department should continue its current practice on adjustments for duty drawback. A domestic manufacturer will generally purchase a domestic part at a price lower than an imported part's price plus duty given the opportunity, or an imported part price plus duty over a higher domestic price, if available. If available at approximately equal prices, the documentation, bureaucratic red tape, and delays in delivery for the imported part will encourage the manufacturer to by a domestic part. Under this normal and prevailing situation, the Act causes no distortion and there is no justification for departing from the Act and regulations.

Samsung asserts that petitioners' arguments favoring a limitation are unsound and without satutory support. Petitioners' claim of unfairness is unfounded and based on an unrealistic assumption. Petitioners assert that, where merchandise sold in the home market has fewer imported components than exported merchandise, the failure to impose a limitation on the amount of the duty drawback adjustment will have the effect of masking actual dumping margins. This is not commercially realistic. A foreign manufacturer will normally burden himself with the administrative costs of importing a component and applying for duty drawback only when the cost of the imported component exclusive of duty is lower than that of the substitute domestic component. Given these circumstances, application of petitioners' cap on the duty drawback would have the effect not of masking dumping margins, but of creating dumping margins that would otherwise not exist.

DOC Response: We have interpreted section 772(d)(1)(C) regarding indirect taxes fairly literally. It would be

inconsistent for us to apply a "letter of the law" reading to one subsection of section 772, and a "spirit of the law" reading to another subsection. Therefore, we interpret section 772(d)(1)(B) as having no cap. With regard to petitioners' argument that duty drawback provides an incentive for the manufacturer to use imported parts in the production of a product for export, we note that the internationally accepted principle of substitution drawback renders needless such segregation of imported and domestically produced imports.

Comment 4: Petitioners and General Electric contend that the Department can only accept apportionment methodology limited to expenses undifferentiable as to product and properly allocated to color television sales. Many of the expenses for which the respondents claimed adjustments should have been attributable to specific product lines. Yet respondents merely allocated those adjustments (e.g. rebates, credit, etc.) across all product lines.

DOC Response: We do not consider a company's reliance on allocation to be a *per se* demonstration of the direct relationship of an expense to sales. We allow allocation of expenses only if a respondent can demonstrate a reasonable basis for it. Generally, in considering whether to allow allocation of expenses, we require a company to provide the most detailed product-specific information contained in its books and records.

Comment 5: Both Gold Star and Samsung asked for reverification. Gold Star and Samsung specifically argue that the Department should conduct a second verification because they were not given adequate time to prepare documentation on import duties included in the materials cost for domestic color television models. In addition, they maintained that the Department was unable to complete the verification because of limited time during the verification. Gold Star argued that reverification was warranted because of the complexity of the issues and extraordinary depth of the Department's first verification, particularly in view of the fact that the Department refused to grant an extension of the preliminary determination.

Petitioners argue that reverification of data submitted by Samsung and Gold Star is unwarranted. The respondents have already submitted voluminous amounts of data and had an opportunity for verification. Respondents cannot now claim that they have had inadequate opportunities to substantiate their claims. Sound administrative practice also dictates no reverification. There must be some point before the end of an investigation at which respondents must support their claims or be at risk. Otherwise, the Department will be unable to induce compliance with its requests for essential information and will be unable to conduct investigations in a measured and judicious manner. Respondents will have further opportunities in subsequent reviews to rectify any prejudice that may result.

The Korean Ministry of Commerce and Industry and Samsung urge the Department to give full consideration to post-verification documents submitted to the Department by Samsung and Gold Star. The Ministry argues that, in view of the fact that the Department gave only a limited amount of time to verification of the Korean manufacturers' data and that the Department cancelled a second verification, it would neither be fair nor objective for the Department to reject the post-verification data.

DOC Response: Another verification was inappropriate. For the most part, the problem with claims for adjustment was the quality of the submissions (including post-verification submissions), not the lack of adequate verification. For a minority of the disallowed claims, the companies did arguably submit adequate supplemental responses but only in late January, much too late for new attempts at verification by the Department. In an investigation, we cannot use unverified data. We agree with petitioners' comments about sound administrative practice.

With regard to the first of respondents' points, the issue is moot. (*See* comment 3.) As for the second point, we disagree. A manufacturer reviews its files and quantifies its expenses in order to prepare its questionnaire response. We presume all data were gathered at the time the response was prepared. We verfied respondents' data less than three months after submission of their responses. Each verification lasted a week, enough time for a complete verification.

Comment 6: Petitioners, General Electric and Zenith argue that to be allowable, discounts and rebates must: (1) Be available to all purchases at wholesale and (2) may not be after-sale rebates. The Act provides that the foreign market value (and therefore fair value) is to be the price (at the time of exportation or purchase) "to all purchasers at wholesale." The antidumping law was amended in 1958 to conform the foreign market value definition to the fair value regulation and to the then-recently supplemented Customs valuation provisions.

DOC Response: We disagree with the U.S. industry. The allowance of discounts and rebates has been a long-standing administrative practice. *See* the Department's final results of its first administrative review regarding Japanese television receivers (46 FR 30163 (1981)). Further, whether or not fixed at the time of sale, rebates represent a reduction in the price paid by the customer and must be deducted in calculating fair value.

Comment 7: More generally, petitioners and General Electric argue that costs and expenses incurred after the time of sale have no bearing on price. Adjustments based on post-sale cost are not authorized by law. The Department is allowed to adjust foreign market value for differences in quantities, in other circumstances of sale, or in merchandise. These adjustments clearly have a bearing on any difference between U.S. price and foreign market value. The only costs which can relate to the prices at which color television receivers were sold during the period of investigation where those incurred prior to the date of sale. The manufacturer's historical experience provides the basis for its price-setting decisions. Even if the Department uses costs incurred during the period of investigation as surrogates for historical experience, costs incurred after the period of investigation cannot be included.

DOC Response: During a fair value investigation we must evaluate pricing conduct during a specific period and must consider the factors that the manufacturer dealt with during that period. We may consider those factors in light of the manufacturer's historical experience. However, we may also consider post-investigatory period events that, in light of the manufacturers' historical experience, we can reasonably expect they anticipated in making their pricing decisions. For example, rebates booked but not yet given which a manufacturer's history demonstrates were given in previous years, are appropriate for adjustment.

Comment 8: Anam and KEC claim that their bad debt losses are properly treated as circumstance of sale adjustments. The suggestion that bad debt does not relate directly to sales price, because the extent of the bad debts is not known until well after the date of sale, would be true only if a manufacturer assumed that all of his accounts receivable would be paid. No responsible manufacturer does this. The initial sales price includes a factor

anticipating bad debt losses. The Department does not make other circumstance of sale adjustments even though the actual cost may be incurred prior to the date of sale, as with advertising, or subsequent to the date of sale, as with warranty cost.

Zenith argues that the Department should continue to deny bad debt as a circumstance of sale adjustment. Bad debt cannot conceptually be regarded as directly related to sales. Incurring a bad debt does not enhance the value of merchandise or encourage its sale. The seller cannot control bad debt as part of a sales program. It is simply another cost of being in business.

A foreign respondent could merely decline to show that bad debt is a direct selling expense in the U.S. market while claiming bad debt is a direct selling expense in the home market. By doing so in an ESP setting, the respondent would keep export-related bad debt in the ESP offset cap, but remove it from the eligible ESP offset indirect selling expenses, thereby including in the offset other indirect expenses which otherwise would have been excluded by the cap.

Finally, the bad debt claims were not quantified on the basis of historical costs. (*See* Comment 7.)

Gold Star argued that its home market bad debt losses are properly allocated to sales of color televisions during the investigatory period and should be treated as direct selling expenses. Gold Star based its claim only on those bad debts occurring (*i.e.,* those accounts that became worthless) during the period. It then subtracted all setoffs and recoveries it received through September 1983 on those customer accounts. By tracing the sales history of each account, Gold Star tied the worthless accounts to specific sales of color televisions. After isolating the portion of each account directly attributable to specific sales, Gold Star allocated this amount to sales of such merchandise occurring during the investigatory period. The method of allocation parallels the Department's longstanding practice with respect to warranties and advertising.

DOC Response: We agree with Zenith that bad debt by its very nature is an indirect selling expense. Treasury, as early as 1972, rejected bad debt as a circumstance of sale adjustment.

We decided not to grant Gold Star's claim even as an *indirect* expense because Gold Star did not in fact report any write-offs of bad debts during the period of investigation.

Comment 9: Gold Star argues that the Department cannot fairly compare Gold Star's U.S. sales to the Korean sales without adjusting for the different levels of Trade. The GATT, the legislative history of the trade Agreements Act of 1979, and the Department's own regulations all require that sales be compared at the same level of trade. The regulations require that, when we cannot compare at the same level of trade, we should make an adjustment for the differences affecting price comparability.

Virtually all Goal Star's home market sales are to small retail stores, while in the United States a major portion are to distributors, wholesalers, and mass merchandisers. The large U.S. customers perform distribution and marketing functions that Gold Star itself must perform in the home market.

DOC Response: We disallowed Gold Star's claim for a level of trade adjustment in our preliminary affirmative determination because Gold Star based its claim on the differences in prices of audio electronic products sold to the retail and distributor levels in its home market. Such a basis has no necessary relationship to any differential for televisions. We received no further data, properly quantifying a level of trade difference, after the preliminary determination, and consequently have verified no such data.

Comment 10: Zenith submits that the Department treated respondents' home market credit expense too favorably. Zenith argues that home market transactions were made at the same price, but involved different periods of delay in receiving payment. Since there was no impact on price, the Department should disallow adjustments for different extensions of credit.

Zenith also points out that, if respondents are not financing accounts receivable entirely by short-term borrowings, then the interest expense involved is not solely a function of the short-term borrowing rate. Rather, it is a function of a combination of different interest rates which may be lower than the short-term borrowing rate. These claims should be denied in full in accordance with the legislative intent that speculatively quantified claims not be allowed in order to avoid unjustifiably reducing the dumping margin.

Finally, Zenith argues that the Department has treated respondents' full amount of interest paid on short-term debt as incurred to finance accounts receivable when common sense indicates that it is also used to finance items such as material purchases, material inventory, product inventory, and office purchases. If the Department is to permit a credit adjustment at all, it should consider reducing its cap to account for other uses to which short-term borrowing is put.

Anam and KEC argue that long-term debt and/or retained earnings may also be used to finance accounts receivable. The economic cost associated with providing credit to purchasers is best measured by a company's marginal cost for credit; i.e., its short-term borrowing rate. Anam and KEC calculated a weighted-average cost based on the amounts financed and short-term interest rates experienced in the period, a highly accurate means of determining true credit costs.

DOC Response: An adjustment for differences in credit expenses, an expense directly related to particular sales, should reflect the actual differences in the extension of credit by a firm no matter how the seller chooses to finance those extensions. Our calculation of the credit costs incurred by the firm for sales in the home and U.S. markets is based upon actual data from the firm (e.g. the appropriate accounts receivable, sales accounts, borrowing records of the firm, etc.). For the purposes of this investigation, we have used the short-term borrowing rate to calculate actual credit costs. We will consider arguments for using other rates for subsequent reviews, if appropriate.

We believe this new approach is better than our previous policy of using short-term interest expenses to cap the amount to be considered in adjusting for differences in credit costs. Funds borrowed for short-term may be used for a variety of purposes which may or may not reflect costs incurred by a firm due to differing credit extension policies.

If a firm could satisfactorily demonstrate and quantify actual costs directly attributable to extensions of credit on particular transactions, we would use the actual expense incurred to calculate the credit expense on those sales.

In this investigation, because no firm could adequately demonstrate and quantify all costs incurred for extensions of credit on particular transactions, we have calculated the credit expense by applying the appropriate short-term interest rate to the days outstanding between the date of shipment to the first unrelated purchaser and the date of payment by that purchaser.

Comment 11: Gold Star argues that is sales in Korea under the Gold Star trademark creates a significant commercial difference between merchandise sold in Korea and to the United States. Purchasers are willing to pay a higher price because of the

presence of a trademark. The presence of a valuable trademark changes the nature of merchandise and the circumstances under which it is sold just as much as the length of a warranty or the terms of payment. Without an adjustment for the effect of a trademark on market value, the Department cannot ensure an "apples to apples" fair value comparison. Gold Star has submitted a reliable quantification of the value of its trademark calculated upon an accepted accounting methodology.

Zenith argues that allowance of Gold Star's claimed adjustment for a trademark would allow Gold Star to justify dumping. Any suggestion in the Department's final affirmative determination on lightweight polyester filament fabrics from Japan (49 FR 472 (1984)) that the Department might allow such adjustments should be repudiated.

Zenith also argues that Gold Star's valuation method is invalid since its results may be a product of factors other than the existence of the trademark. Finally, the trademark's value is a function of the success of the seller's advertising, sales promotion, and after-sale servicing programs in convincing consumers of the quality of the trademarked merchandise. Commerce should not adjust twice for the effect on value of those efforts.

DOC Response: Zenith correctly points out that such a value may actually be part of the basis for the imperfectly competitive foreign market that allows a company to dump in the United States. Actual costs, such as warranty and advertising, are tangible factors manufacturers use in structuring prices, and adjustment for them also accounts for trademark impact. To the extent there was a value of the trademark, over and above the cost of creating the trademark recognition, it is an intangible. For such an intangible, a company would have to show us how it took that intangible into account in setting its prices and how the firm quantified the value at that time before we would grant such an adjustment.

Comment 12: Samsung maintains that several of the home market models selected by the Department for comparison are inappropriate as the basis for foreign market value.

DOC Response: We disagree with Samsung concerning two of the four model comparisons. We have revised our model selections and used the two other models suggested by Samsung.

Comment 13: Samsung argues that expenses incurred by the Public Information Office in Seoul should be included in the adjustment for home market indirect selling expenses.

DOC Response: The explanation of the function of the Public Information Office revealed that it was not involved in selling. There is no justification for including its expenses in the home market indirect selling expenses.

Comment 14: Mattel, Inc. commented that, while it supported the Department's determination that critical circumstances did not exist, it wished to express its concern over the Department's reasoning.

DOC Response: Because we are here adhering to our earlier determination that critical circumstances do not exist, we believe this issue is moot.

Comment 15: Samsung claims that its expenses for return loss on ESP sales should be considered a manufacturing expense rather than a selling expense. There is no difference between the situation where a customer returns a set to Sansung's U.S. subsidiary because of defects which are infeasible for the subsidiary to repair, and the situation where a defective set is removed from the assembly line. In the latter case the cost to Samsung would be treated as part of the cost of producing the remaining non-defective televisions. Precisely the same approach should be taken with respect to the sets now under consideration. Finally, the "loss" cannot be measured by the difference between the price realized by the subsidiary on resale of the defective sets and the price paid by the subsidiary to Samsung.

DOC Response: Samsung clearly incurs costs when it resells "defective" parts it had previously sold. We do not consider these expenses to be manufacturing costs; they occur after the manufacturing process. These expenses (referred to as "return loss") are incurred during the selling process. As such they are properly deducted from ESP as an indirect selling expense.

Comment 16: Zenith claims that the Department should reduce the ESP offset adjustment by the amount of selling expenses incurred in the home market for export sales to the United States. In ESP calculations, section 772(e)(2) does not remove from U.S. price all expenses incurred in selling to the United States, but only those incurred *in* the U.S. By stripping out of the home market price, under the ESP offset, indirect selling expenses incurred in the home market on the export sales, the Department has overcompensated for U.S. indirect selling expenses. The indirect selling expenses eligible for offset in the home market should be reduced by the amount of all selling expenses incurred in the home market for export sales to the U.S. The involved expenses may not and should not be stripped out of U.S. price. Section 772 of the Act and the administrative regulations do not contain authority to strip such expenses out of ESP. The appropriate mechanism for the adjustment is the ESP offset regulation. Further, removal of such expenses from U.S. price would raise the maximum amount of ESP offset.

DOC Response: We agree with Zenith that an adjustment for the parent's expenses on the U.S. sales is appropriate. However, we have deducted the expenses from the U.S. price.

Comment 18: Petitioners and General Electric argue that it is likely that Gold Star provided rebates, discounts, and/or other allowances to its customers which have not been reported to the Department.

DOC Response: While we recognize the possibility that Gold Star and other companies may not have reported all discounts, rebated and/or allowances, we do not have any such evidence in this case.

Verification

In accordance with section 776(a) of the Act, we verified data used in making these determinations by on-site inspection of manufacturers' facilities and examination of company records and selected original source documentation containing relevant information.

Samsung and Gold Star submitted much data after the on-site verifications, some in response to our verification reports, others to our requests, and others to further support various claims for favorable adjustments. In addition, petitioners and General Electric commented on the verifications. Many of the comments were confidential and we have not addressed them in the Federal Register notice.

Other comments by Samsung, Anam, KEC and Gold Star were received too late to address in the Federal Register notice.

Negative Determination of Critical Circumstances.

Counsel for petitioners alleged that imports of color television receivers from Korea present "critical circumstances" within the meaning of section 735(e)(3) of the Act. Critical circumstances exist when the Department determines that: (1) There have been massive imports of the merchandise under investigation over a relatively short period; and (2) there is a history of dumping in the United States or elsewhere of the merchandise under investigation, or (3) the person by whom, or for whose account, the merchandise

was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value.

The petitioner did not allege a history of dumping of Korean television receivers. We therefore considered whether the person by whom, or for whose account, the product was imported knew or should have known that the exporter was selling such television receivers at less than fair value. We believe that, where margins are sufficiently large, it is reasonable for the Department to find that the importer knew or should have known that the prices for sales to the United States (as adjusted according to the antidumping law) were significantly below home market prices. In this case, we have found that the margins are not sufficiently large to warrant finding that importers, even those which are related parties, knew or should have known that this product was being sold at less than fair value. Since there is no history of dumping and no basis for finding that importers knew, or should have known that the exporters were selling at less than fair value, we need not consider whether imports were massive. Therefore, we determine that critical circumstances do not exist with respect to color television receivers from Korea.

Suspension of Liquidation

In accordance with section 733(d) of the Act, on October 19, 1983, we instructed the U.S. Customs Service to suspend liquidation of all entries of color television receivers from Korea. As of the date of publication of this notice in the Federal Register, the suspension of liquidation will continue for all entries, or withdrawals from warehouse, for consumption of this merchandise except such merchandise manufactured and exported by Korea Electronics Co., Ltd. Except for KEC, the Customs Service will require a cash deposit or the posting of a bond equal to the weighted-average margin amount by which the fair value of such merchandise exceeds the U.S. price. The suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer	Weighted-average margin (percent)
Anam	0.82
Gold Star	14.77
KEC	0.00
Samsung	15.95
Taihan	16.57
All others	13.90

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination of whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping order, directing Customs officers to assess dumping duties on color television receivers from Korea entered, or withdrawn from warehouse, for consumption on or after the date of the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. price.

William T. Archey,

Acting Assistant Secretary For Trade Administration.

[FR Doc. 84-5511 Filed 2-29-84; 8:45 am]

BILLING CODE 3510-DS-M

Antidumping; Final Determination of Sales at Less Than Fair Value; Color Television Receivers From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Final Determination of Sales at Less than Fair Value.

SUMMARY: We have determined that color television receivers from Taiwan are being sold in the United States at less than fair value. The United States International Trade Commission ("ITC") will determine within 45 days of the publication of this notice whether these imports are materially injuring, or are threatening to materially injure, a United States industry.

We have excluded Orion Electric (Taiwan) Co., Ltd. from this final determination.

EFFECTIVE DATE: March 1, 1984.

FOR FURTHER INFORMATION CONTACT: David R. Chapman, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230: telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that color television receivers from Taiwan are being sold in the United States at less than fair value, as provided for in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) ("the Act").

We have found *de minimis* sales at less than fair value by Orion Electric (Taiwan) Co., Ltd. Therefore, we are excluding merchandise manufactured and exported by this firm from our final determination.

We found that the fair value of color television receivers from Taiwan exceeded the United States price on approximately 38.9 percent of all sales of this product. The margins ranged from 0.01 percent to 261.54 percent. The overall weighted-average margin on all sales compared is 5.56 percent.

Case History

On May 2, 1983, we received a petition from the Independent Radionic Workers of America, the International Brotherhood of Electrical Workers, the International Union of Electrical, Radio & Machine Workers, and the Industrial Union Department, AFL-CIO, on behalf of the U.S. industry producting color television receivers. In accordance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that color television receivers from Taiwan are being, or are likely to be, sold in the United States at less fair value within the meaning of section 731 of the Act and that these imports are materially injuring, or threatening to materially injure, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds to initiate an antidumping investigation. We notified the ITC of our action and initiated an investigation on May 27, 1983 (48 FR 23879-80). The ITC subsequently found, on June 16, 1983, that there is a reasonable indication that imports of color television receivers are materially injuring, or are threatening to materially injure, a U.S. industry.

General Electric Company and Zenith Radio Corporation entered the proceeding as interested parties.

On September 20, 1983, petitioners amended the petition to allege that critical circumstances, as defined in section 733(e) of the Act, exist.

On October 19, 1983, we preliminarily determined that color television receivers from Taiwan were being sold, or were likely to be sold, in the United States at less than fair value (48 FR 48490). We also preliminarily determined that critical circumstances did not exist. The notice stated that if the investigation proceeded normally, we would make a final determination by December 23, 1983.

From October 17–30, 1983, we verified the responses of the manufacturers in Taiwan and, in the period October 10, 1983 through January 27, 1984, we verified the response data pertaining to sales in the United States by subsidiaries of seven of the manufacturers.

After reviewing requests from five of the manufacturers, together representing approximately 50 percent of the exports subject to the investigation, we postponed our final determination until no later than February 23, 1984. We rescheduled and held our hearing on January 11, 1984. We also provided for the submission of written views.

Scope of Investigation

The merchandise covered by this investigation is color television receivers, complete or incomplete. This investigation is intended to cover all color television receivers regardless of tariff classifications. The merchandise is currently classifiable under item numbers 685.1125, 685.1126, 685.1127, 685.1128, 685.1129, 685.1135, 685.1144, 685.1148, 685.1455, 685.1456, 685.1458, 685.1460, and 685.1463 of the Tariff Schedules of the United States Annotated.

The petition alleged that Sampo Corporation, AOC International, Orion Electric (Taiwan) Co., Ltd., Hitachi Television (Taiwan) Ltd., and Tatung Co., produce color television receivers for export to the United States. In addition to the companies named in the petition, we also examined sales by Fulet Corporation, Sanyo Electric (Taiwan) Co., Ltd., and RCA Taiwan Ltd.

The eight manufacturers under investigation accounted for virtually all known color television receivers exported from Taiwan to the United States during the period of the investigation. The investigation covers the period from July 1, 1982, through March 31, 1983 for United States price transactions and generally April 1, 1982 through March 31, 1983 for foreign market transactions.

In the case of Fulet, we have used the best information available to establish its margin. We have done so because Fulet was able through verification to support only certain portions of its late supplemental submissions. Using even those portions would have required prohibitively extensive recalculations by the Department.

United States Price

As provided for in section 772 of the Act, we used the purchase price as the United States price for sales by Orion, and certain sales by Sampo, Sanyo, and AOC because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We used exporter's sales price ("ESP") for other sales by Sampo, Sanyo, and AOC and for all sales by RCA, Hitachi and Tatung.

We calculated purchase price based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in the United States. We made deductions from that price, where appropriate, for foreign inland freight, foreign brokerage and insurance, stamp tax and export charges, ocean freight, marine insurance, U.S. Customs duties, U.S. brokerage, U.S. inland freight, discounts, rebates and royalties.

We calculated ESP by deducting from the gross price to unrelated purchasers in the United States amounts for the following items, where appropriate: foreign inland freight, foreign brokerage and insurance, stamp tax and export charges, ocean freight, marine insurance, U.S. Customs duties, U.S. brokerage, U.S. inland freight, commissions to unrelated parties, warranty expenses, credit expenses, advertising expenses, royalties, discounts, rebates, and indirect selling expenses.

As provided for under section 772(d)(1)(B) of the Act, we added back to the U.S. price the amount of import duties, rebated upon exportation of the color television receivers, which had been assessed upon importation of the materials used in production of the televisions. As for taxes rebated or not collected upon export, within the meaning of section 772(d)(1)(C) of the Act, we have made the adjustment by subtraction from home market price as best evidence. (*See* Comments 1 and 2 below.)

For extensions of credit to customers, we have changed Departmental practice. (*See* Comment 7.)

For RCA's ESP calculations, we used the best information available to establish the foreign inland freight costs. The best information available is the experience of another manufacturer.

For Tatung we used its actual U.S. warranty expense experience instead of the averages used in our preliminary determination.

For Hitachi, we have used customer-specific data for certain rebates instead of averages. In addition, we have disallowed as a deduction to indirect selling expenses the income generated from rental property, gross profit on service sales, interest income, bad debt recovery and the excess bad debt reserve.

We used Sanyo's actual expenses for U.S. brokerage charges and for rebates instead of the averages used in our preliminary determination. We used Sanyo's home market warranty on the one comparison model to represent warranty expenses on the U.S. sales because we found the home market experience more representative for that model.

Fair Value

In accordance with section 773 of the Act, we used home market prices to establish fair value for Sanyo, Sampo, and Tatung because sufficient quantities of such or similar merchandise were sold in Taiwan during the period of investigation to establish a basis for comparison. AOC, Hitachi, Orion, and RCA had no sales of color television receivers in Taiwan during the period. Therefore, we used sales by Orion to unrelated purchasers in Canada as a basis for fair value. RCA had no third-country sales. AOC and Hitachi had insignificant sales to other countries. For AOC, Hitachi and RCA, we used constructed value as our basis for fair value.

We calculated the home market price by deducting from the gross, packed prices to unrelated customers the following items, where appropriate: freight, discounts, rebates and insurance. We made adjustments, where appropriate, for differences in the physical characteristics of the merchandise, commissions to unrelated parties, packing costs, royalty expenses, warranty expenses, credit expenses, direct advertising and sales promotion expenses, and certain technical service expenses. In addition, in ESP comparisons, we deducted indirect selling expenses from the home market price but limited the deduction by the amount of the U.S. indirect selling expenses. We based adjustments for differences in physical characteristics, when allowed, on differences in costs of materials, labor, and variable factory overhead.

We calculated the third-country price by deducting from the packed c.i.f. or

f.o.b. prices the following items, as appropriate: Taiwan inland freight, Taiwan brokerage, stamp tax and export charges, ocean freight, marine insurance, and bank charges. We made adjustments, where appropriate, for differences in physical characteristics, commissions, packing costs, royalties, warranties, and advertising expenses.

We calculated the constructed value by totalling the costs of materials, fabrication, general expenses, profit and the cost of packing. The amount added for general expenses was 10 percent of the sum of materials and fabrication costs or actual general expenses, whichever was higher. The amount added for profit was eight percent of the sum of the costs of materials, fabrication and general expenses or the calculated company profit, whichever was higher.

As set forth below, in making adjustments to the fair value, we made several changes to the figures offered by respondents either because the figures offered did not represent actual amounts calculated according to our usual practices, or because our verification of the claim indicated that another amount should be used.

For the home market extensions of credit for each company, we used our new methodology described in Comment 7.

We have disallowed Sampo's claim for product engineering costs. These are research and development expenses which have been incurred regardless of individual sales. (*See* Comment 13.) We have disallowed its warranty expense claim as a direct selling expense adjustment. We did include it as an indirect selling expense.

We made circumstance of sale adjustments for Sanyo's special sales promotional discount, deposit and collateral discount, and an adjustment to price for its early payment discount II. We had denied these adjustments in our preliminary determination. We have now adequately quantified and verified such discounts.

For Tatung we allowed as adjustment for differences in physical characteristics the costs of antennas, feeder wire, boosters, and cloth covers which we had preliminarily disallowed. (*See* Comment 16.) We disallowed its claimed adjustments for "other discounts" and "antenna fitting and trade-in allowance," which we had allowed in our preliminary determination, because we found at verification that these costs were included in the "dealer bonus." We have allowed the "dealer bonus" adjustment on sales only to dealers. We disallowed circumstance of sale claims for design costs, market research and new product testing, and a direct selling expense adjustment for "final costs for the servicemen." We also denied them as indirect selling expenses. (*See* Comment 13.)

For all companies, we disallowed as direct selling expenses the claims for adjustments for bad debts incurred on home market sales. (*See* Comment 6.)

Analysis of Comments Received

We invited interested parties to comment on the preliminary determination and verifications. We received the following comments.

Comment 1: Petitioners, General Electric, and Zenith all argue that the Department should adjust United States price (rather than the home market price) for the commodity tax in accordance with section 772(d)(1)(C) of the Act, using as the tax basis the price of the exported merchandise. The U.S. industry argues that the method proposed by the exporters, adding an amount equal to the tax imposed on the home market models, is contrary to the specific statutory language and suppresses the *ad valorem* dumping margins. The Department's optional approach (used in the preliminary determination), stripping all such taxes from the foreign market value (rather that adding them to U.S. price), also is contrary to the explicit statutory mandate and was rejected by Congress when it enacted the 1921 Antidumping Act.

Petitioners and General Electric argue that the multiplier effect (increasing the amount of the absolute dumping margin by applying the neutral tax rate to a lower export price) is consistent with the remedial and deterrent purposes of the Act, and imposes no additional burden on foreign producers who are willing to price fairly. They argue that objections to their methodology, based on *creating* dumping margins solely by applying the tax rate to prices prior to adjusting for differences in merchandise and circumstances of sale, can be obviated by making supplemental adjustments to the foreign market value for the tax consequences of those differences.

Respondents' proposal, that there be a supplemental adjustment to foreign market value for the net difference between the actual home market tax paid and the tax addition to U.S. price based on U.S. price, would lower the absolute and/or percentage margins when compared with the petitioners' methodology or the Department's optional methodology.

Because Congress specified exactly what the Department should do about tax remissions in a particular statutory adjustment provision, Zenith disagrees with all other parties and believes undoing that adjustment by resort to a supplemental adjustment under a more general adjustment provision (that for differences in circumstances of sale) violates the statutory construction rule of *in pari materia*.

Zenith argues that, assuming an economic rationale is needed to justify the multiplier effect, Congress concluded in 1974 that the old assumptions of full-forward shifting of indirect taxes and of trade neutrality of border tax adjustments were invalid. At that time, Congress tightened the tax adjustment provision, adding language which does not automatically neutralize the full amount of indirect taxes paid on home market sales.

The U.S. industry argues that the Department should not limit the application of petitioners' proposed methodology (with or without petitioners' supplemental adjustment to fair value) to prospective application, but should implement the Act's mandate in all current proceedings. There is no well established agency practice for the adjustment of such taxes. Foreign producers could not have relied upon an approach other than petitioners' proposal because the statutory language is plain, and application of the proposed methodology would not require price adjustments to eliminate margins greater than another approach. Further, these investigations are not subject to the Administrative Procedure Act. When the Department changes its approach on an issue, it need only articulate the reason for the change. Respondents have no right to rely upon action taken in other proceedings as controlling the Department's action in these investigations. Finally, respondents are challenging the Department's authority to correct its previous statutorily erroneous calculations.

Sanyo argues that the Department and the domestic interests have misinterpreted section 772(d)(1)(C) of the Act. The Department should calculate the commodity tax paid on comparison models and add that entire amount to the U.S. price. This will effectively eliminate the multiplier effect, will achieve the statutory purpose of tax neutrality, and will administer the law in accordance with longstanding administrative practice.

Sanyo argues that, should the Department decide to ignore its past practice and the applicable legislative history, the Department must further adjust the price comparison through a circumstance of sale adjustment in order to achieve tax neutrality. Zenith's

assertion that the Department does not have the statutory authority to make this secondary circumstance of sale adjustment totally ignores the teaching in *Smith-Corona Group* v. *United States*, 712 F. 2d 1568 (Fed. Cir. 1983) that the Act requires prices to be adjusted for differences in circumstances of sale when they are shown to exist. The explicit inclusion of remitted or uncollected taxes in section 772(d)(1)(C) of the Act does not preclude the Department from making an additional adjustment for the differences in these taxes pursuant to section 773(a)(4). Should the Department reject Sanyo's positions, it can still achieve tax neutrality by subtracting the commodity tax in the home market price and not adjusting the U.S. price.

Finally, Sanyo argues that not only is certainty necessary for an agency's own ability to operate in an efficient manner, but failure to follow prior practice makes it impossible for persons affected by a statute to conduct their business affairs to avoid unnecessary expense and unforeseen problems. Even if prior administrative practice did not exist, the Department would be required to interpret section 772 as Sanyo advocates. In the congresssional decision in 1921 to add the tax to U.S. price (rather than subtract it from foreign market value), Congress' focus on administrative burdens demonstrates that it did not believe that addition affected the price comparisons. Congress was solely concerned with achieving tax neutrality in an administratively feasible manner. The 1974 amendment was intended solely to restrict the range of taxes allowed as part of the adjustment. Further, the Administration in 1974 clearly intended that the amendments achieve tax neutrality, a position that subsequent administrative decisions have followed.

Fulet, Sampo, and Tatung argue that petitioners' suggested methodology regarding the adjustment to U.S. price for the commodity tax is irrelevant because the Taiwan tax authorities use "taxpaying value," rather than price, to assess the tax. When a Taiwanese company produces a new model, it prepares and submits to the tax authorities a proposed taxpaying value supported by cost and profit information. The Taiwan tax authorities review that information, do their own research relating to market prices, and then fix and publish a single taxpaying value for that model. Unless and until modified (based on new submissions by the company or on research by the tax authorities), the taxpaying value remains the same and is imposed on all sales of the model regardless of the actual selling price and regardless of the market in which sold. In many instances, the taxpaying value is in fact less than the actual selling price (less commodity tax) of a television. Thus, even if the actual home market price and export price vary, the tax that "would be paid" on the export sale would be the same tax as paid on the home market sale. The appropriate addition to U.S. price is the tax reported by the Taiwan companies. That tax was based on "taxpaying value," and is the tax that would have been paid on the export sale.

All sides view their diametrically opposed positions as consistent with the obligations of the United States under the General Agreement on Tariffs and Trade (GATT).

DOC Response: We agree that in section 772(d)(1)(C), Congress called for the *addition* of such taxes to the United States price, using the export sale in determining the tax basis. If there is a dumping margin in the total absence of taxes in either market, such an addition is not tax neutral. There is a multiplier effect on the margin. We believe that adding to the U.S. price the taxes on the home market sales, while neutralizing the multiplier effect on the absolute margin, serves to reduce the tax absent *ad valorem* margin. We also believe that, if there are differences in circumstances of sale or in merchandise, petitioners proposed supplemental adjustment to foreign market value is needed to eliminate the possibility of creating margins solely throught the tax adjustments. The adjustment would reduce but not eliminate the multiplier effect if there were a pre-existent margin. We have not resolved the question of whether there should be an adjustment to foreign market value for the tax differential itself.

From our review of the Taiwan tax laws, we have been unable to establish what the appropriate tax basis would be for the exported merchandise. Respondents submitted material regarding the "taxpaying value" that is insufficient and contradictory. Therefore, we cannot calculate that value with any certainty. In the absence of knowing what the tax addition to U.S. price should be, we cannot calculate the differential. Therefore, as best information, we are making the adjustment by deducting the tax from the price of the home market merchandise. Deducting from the home market price is the only tax neutral adjustment for both the *ad valorem* and absolute margin.

We agree with the U.S. industry that we need not apply such changes in methodology only on a "prospective" basis. We disagree that the Department, or Treasury before it, had a longstanding administrative practice of adding the amount of the home market tax on comparison merchandise to the United States price. That approach has been taken in some cases. In others, the tax has been stripped out of the home market price or, particularly in cases of the separate line invoicing of a value added tax, not included in the home market calculation at all, with no addition made to the U.S. price. Subtraction or non-inclusion is administratively convenient and achieves tax neutrality. In still other cases, the home market tax rate has been applied to the export price.

Comment 2: Petitioners and General Electric argue that the section 772(d)(1)(C) addition to U.S. price for indirect taxes should be limited to the amount of comparable taxes actually passed through to purchasers in the home market. The Act requires such a limitation. The taxes claimed in the home market by respondents were based on a gross invoice price. However, the manufacturers ultimately received less than the gross invoice price from their customers because that price was reduced by subsequent discounts, rebates, and extensions of credit to customers. The fairest price comparison is to reduce the upward tax adjustment to U.S. price by the ratio of: (1) Taxes absorbed by foreign producers in their home market sales, rather than passed on to purchasers, to (2) all taxes paid on those sales.

Zenith agrees that the Act limits the United States tax adjustment. The amount added should be the amount of tax paid to the foreign government less all reductions in the taxable price that were given to the purchasers.

Sanyo argues that the congressional discussion in 1974 of the new limitations on the tax adjustment effectively rebuts the "pass through" argument advocated by the domestic industry. Congress intended that the antidumping law parallel Treasury's practice in countervailing duty cases of viewing all indirect taxes as being passed through to the consumer. The Treasury Department continued this practice from 1974 through 1979: the Congress did not change the practice in enacting the Trade Agreements Act of 1979, and the Commerce Department has followed the practice in its administration of the law.

Fulet, Sampo, and Tatung claim that section 772(d)(1)(C) does not require a determination whether the entire tax is

passed through. It is impossible to ascertain with any precision whether and to what extent a manufacturer is passing a tax through to the consumer or absorbing the tax. Where the rebate, or unpaid tax, is more on the export sales than the tax paid on the home market sales, the adjustment for taxes rebated may be limited to the tax element in the home market price.

DOC Response: The differing treatment of direct vs. indirect taxes under GATT and U.S. law arose from the assumptions that indirect taxes were shifted fully forward to purchasers while direct taxes were absorbed by sellers. By the late 1960s, however, academic literature and U.S. government reports cast substantial doubt on the veracity of these assumptions. It is clear that the Congress in 1974 was aware of these doubts. In light of the public debate, it is only reasonable in conclude that the Congress, in its addition to section 772(b)(1)(C) of the "but only to the extent" language, intended that we measure absorption and limit the addition to the tax passed through. However, it is impossible to do so. The degree of shifting depends upon, among other things, the demand for the product, actions of the monetary authorities, the stage of the business cycle and the degree of competition among the producers of the good. In short, the Department would have to know the shape and position of the supply and demand curves for a product in the absence of tax to determine the price that would then exist. The Department would have to know these facts for each point in time at which a sale, chosen for comparison to a U.S. sale, occurred. The U.S. industry's proferred solutions to these questions fall far short of meeting these informational difficulties. In the absence of any meaningful proposal of how to measure absorption, the Department has presumed full pass through in this investigation.

Comment 3: Petitioners, General Electric, and Zenith argue that the statutory addition to U.S. price, under section 772(d)(1)(B), for waived or remitted import duties should be limited to an amount equal to the import duties which burden the comparison home market merchandise. Failure to limit would frustrate the purposes of the Act by masking real margins of dumping.

Taiwan must supplement local parts production with imports. As a result, producers procure identical parts from both domestic and foreign sources and, once the parts have been procured, must decide whether to use the imported parts and components in sets to be sold in the home market or in sets for exportation. The availability of duty drawback provides a great incentive to use imported parts in color television receivers produced for exportation. Even where the price of an imported component without duty is comparable to the price of a domestically produced part, foreign producers may learn to favor the imported part in exported products if the duty drawback adjustment in the dumping calculation would allow them to mask dumping duties.

No implication should be read into the fact that Congress in 1974 amended what is now section 772(d)(1)(C) by limiting the upward adjustment to U.S. price for internal indirect taxes, but not limiting the duty drawback addition under section 772(d)(1)(B). The overall legislative history of these provisions makes it clear that Congress was attempting to create adjustments that would establish comparability between home market and export transactions, and to prevent dumping margins generated solely as a result of the waiver or remission of taxes or duties. In 1974 Congress was attempting to limit the range of taxes for which an adjustment could be made, and to limit the amount of the adjustment where the full amount of the tax is not passed through to home market customers. Congress never focused on the problem of the unequal burden of import duties on home market and exported merchandise. Had the Congress in 1974 focused upon the issue, it would have made explicit the limitation on the duty drawback adjustment that is implicit because of the purposes and objectives of the Act.

Fulet, Sampo, and Tatung argue that section 772(d)(1)(B) requires the addition of the full amount of import duties rebated or not collected. Unlike section 772(d)(1)(C) concerning internal taxes, this provision of section 772 does not contain language that even arguably limits the amount of the adjustment. Given the plain language of the Act it is unnecessary to resort to legislative intent in order to interpret its meaning. However, the legislative history supports the conclusion that the entire amount of import duties rebated should be included in U.S. price. Congress intended to avoid the creation of dumping margins solely because of a duty drawback.

Sanyo argues that petitioners' claim that the Department's duty drawback adjustment was excessive and resulted in a distorted comparison is totally inapplicable to Sanyo. Review of Sanyo's submission reveals that its claim for a duty drawback adjustment was substantially less than the amount of duties paid on the home market comparison model. Should the Department accept the petitioners' proposal, Sanyo's adjustment should be increased to the full amount of taxes included in the home market sales price.

Sanyo also claims that it has accurately calculated its differences in merchandise costs for sets sold in the home market and for the United States. Petitioners' allegation that some Taiwan producers may have claimed an additional unwarranted adjustment by adding the duty drawback to U.S. price, while calculating the difference in merchandise between home market and export models without adding this duty to the exports models to the cost comparison does not pertain to Sanyo. Sanyo's original submission sets forth the materials costs for the U.S. model, including an amount attributable to duty drawback.

DOC Response: We have interpreted section 772(d)(1)(C) regarding indirect taxes fairly literally. It would be inconsistent for us to apply a "letter of the law" reading to one subsection of section 772 and a "spirit of the law" reading to anothe subsection. Therefore, we interpret section 772(d)(1)(B) as having no cap. With regard to petitioners' argument that duty drawback provides an incentive for the manufacturer to use imported parts in the production of a product for export, we note that the internationally accepted principle of substitution drawback renders needless such segregation of imported and domestically produced inputs.

Comment 4: Petitioners and General Electric argue that costs and expenses incurred after the time of sale have no bearing on price. Adjustments based on post-sale costs are not authorized by law. The Department is allowed to adjust foreign market value for differences in quantities, in other circumstances of sale, or in merchandise. These adjustments clearly have a bearing on any difference between U.S. price and foreign market value. The only costs which can relate to the prices at which color television receivers were sold during the period of investigation were those incurred prior to the date of sale. The manufacturer's historical experience provides the basis for its price-setting decisions. Even if the Department uses costs incurred during the period of investigation as surrogates for historical experience, costs incurred after the period of investigation cannot be included.

DOC Response: During a fair value investigation, the Department must

evaluate pricing conduct during a specific period and must consider the factors that the manufacturers dealt with during that period. We may consider those factors in light of the manufacturers' historical experience. However, we may also consider post-investigatory period events which, in light of the manufacturers' historical experience, we can reasonably expect they anticipated in making their pricing decisions. For example, rebates booked but not yet given, which a manufacturer's history demonstrates were given in previous years, are appropriate for adjustment.

Comment 5: Petitioners, General Electric, and Zenith argue that, to be allowable, discounts and rebates must: (1) Be available to all purchasers at wholesale, and (2) may not be after-sale rebates. The Act provides that the foreign market value (and, therefore, fair value) is to be the price (at the time of exportation or purchase) "to all purchasers at wholesale." The antidumping law was amended in 1958 to conform the foreign market value definition to the fair value regulation and to the then recently supplemented Customs valuation provisions.

Sanyo argues that the Department should continue its practice of adjusting for discounts and rebates actually provided, regardless whether offered to all purchasers and whether considered to be after-sale rebates. The U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit expressly upheld the Department's interpretation of the applicable law in *Smith-Corona, supra.*

Fulet, Sampo, and Tatung further argue that petitioners' argument, that only a price "freely offered" to all must be used, has been previously rejected by the Department in the related Japanese proceedings. In the *Smith-Corona* case the court decided that rebates allocated to sales were allowable deductions because the allocation did not deprive them of their direct relationship to the sales. Therefore, discounts directly attributable to specific sales, without the need for apportionment, are appropriate adjustments to price.

DOC Response: We disagree with the U.S. industry. The allowance of such discounts and rebates has been a long-standing administrative practice. *See* the Department's final results of its first administrative review regarding Japanese television receivers (46 FR 30163, (1981)). Further, whether or not fixed at the time of sale, rebates represent a reduction in the net price paid by the customer and must be deducted in calculating fair value.

Comment 6: Zenith argues that the Department should continue to deny bad debt as a circumstance of sale adjustment. Bad debt cannot conceptually be regarded as directly related to sales. Incurring a bad debt does not enhance the value of merchandise or encourage its sale. The seller cannot control bad debt as part of a sales program. It is simply another cost of being in business.

A foreign respondent could merely decline to show that bad debt is a direct selling expense in the U.S. market while claiming bad debt as a direct selling expense in the home market. By doing so in an ESP setting, respondent would keep export-related bad debt in the ESP offset cap, but remove it from the eligible ESP offset indirect selling expenses, thereby including in the offset other indirect selling expenses which otherwise would have been excluded by the cap.

Finally, the bad debt claims were not quantified on the basis of historical costs. (*See* Comment 4.)

DOC Response: We agree with Zenith that bad debt by its very nature is an indirect selling expense. Treasury, as early as 1972, rejected bad debt as a circumstance of sale adjustment.

Comment 7: Zenith submits that the Department treated respondents' home market credit expense too favorably. Zenith argued that home market transactions were made at the same price, but involved different periods of delay in receiving payment. Since there was no impact on price, the Department should disallow adjustments for different extensions of credit.

Zenith also points out that, if respondents are not financing accounts receivable entirely by short-term borrowings, then the interest expense involved is not solely a function of the short-term borrowing rate. Rather, it is a function of a combination of different interest rates which may be lower than the short-term borrowing rate. These claims should be denied in full in accordance with the legislative intent that speculatively quantified claims not be allowed in order to avoid unjustifiable reducing the dumping margin.

The Department has treated respondents full amount of interest paid on short-term debt as incurred to finance accounts receivable when common sense indicates that it is also used to finance items such as material purchases, material inventory, product inventory, and office purchases. If Commerce is to permit a credit adjustment at all, it should consider reducing its cap to account for other uses to which short-term borrowing is put.

Finally, Zenith argues that long-term debt and/or retained earnings may be used to finance accounts receivable. Commerce's current policy is to use the seller's short-term interest rate which most likely is the highest rate involved in any of the three financing methods. Long-term borrowings and retained earnings are presumably put to productive use earning interest at the short-term rate.

Sanyo argues that the Department should continue its longstanding administrative practice of adjusting for differences in credit terms notwithstanding Zenith's argument that there was no impact on price. In *Smith-Corona,* the Court expressly upheld the Department's policy for after-sale rebates that had been calculated on several different bases. Notwithstanding the variety of rebate programs offered, and the lack of any evidence that a particular selling price varied although the particular rebate did, the Court determined that due allowance was required by law. When a manufacturer provides an after-sale rebate to its customer, the value of the product received is directly affected by the rebated amount. A credit expense has the same direct effect on market value, a fact recognized by petitioners in their pass-through argument. Sanyo also argues that the Department should allow Sanyo's entire claim for credit, especially that portion of the claim representing "lost opportunity" cost.

DOC Response: An adjustment for differences in credit expenses, an expense directly related to particular sales, should reflect the actual differences in the extension of credit by a firm no matter how the seller chooses to finance those extensions. Our calculations of the credit costs incurred by the firm for sales in the home and U.S. markets is based upon actual data from the firm (e.g. the appropriate accounts receivable, sales accounts, borrowing records of the firm, etc.). For the purposes of this investigation, we have used the short-term borrowing rate to calculate actual credit costs. We will consider arguments for using other rates for subsequent reviews, if appropriate.

We believe this new approach is better than our previous policy of using short-term interest expenses to cap the amount to be considered in adjusting for differences in credit costs. Funds borrowed for short-term may be used for a variety of purposes which may or may not reflect costs incurred by a firm due to differing credit extension policies.

If a firm could satisfactorily demonstrate any quantify actual costs directly attributable to extensions of credit on particular transactions, we would use the actual expense incurred to calculate the credit expense on those sales.

In this investigation, because no firm could adequately demonstrate and quantify all costs incurred for extensions of credit on particular transactions, we have calculated the credit expense by applying the appropriate short-term interest rate to the days outstanding betwen the date of shipment to the first unrelated purchaser and the date of payment by that purchaser.

Comment 8: Petitioners and General Electric comment that Sampo has not employed the formula mandated under Taiwanese law to calculate its commodity tax. The taxing authorities in Taiwan determine the average monthly wholesale price of a commodity, and divide that price by an amount composed of that price, plus the amount of the commodity tax originally paid plus a fixed adjustment for transportation costs. That net price is multiplied by the tax rate of 20 percent. Sampo in its response has overstated the correct tax on the home market sales.

DOC Response: In its response, Sampo provided a formula for calculating the tax that differed from the Taiwan government's formula. Whatever the correct formula, the government-determined tax base does not show a direct relationship to invoice prices. From our reexamination of the verification report and exhibits, it is unclear that Sampo overstated the home market tax.

Comment 9: Petitioners and General Electric comment that Sampo overstated its warranty expenses by including other expenses, such as servicemen's salaries, in addition to the cost of direct parts and labor. The labor cost of Sampo's servicemen is not a warranty adjustment, but at best an indirect selling expense.

DOC Response: Sampo claimed warranty expenses as a circumstance of sale adjustment but had not broken out expenses for color televisions only at the time of on-site verification. Therefore, we have considered Sampo's entire warranty claim as an indirect selling expense. We agree that servicemen's salaries are indirect selling expenses.

Comment 10: Petitioners and General Electric comment that, apart from whether discounts or rebates can be allowed if not freely offered to all, there are serious deficiencies in many of the discounts and rebates claimed by Sampo. The rebate claimed is actually a discount apparently based on sales of all products rather than solely on color televisions. Further, the verification revealed that a lower amount was given on color televisions than that claimed. The Department should use the lower amount.

The Department should disallow the "quality-discount (A) to dealers per month", because Sampo has offered no evidence to confirm its existence. The verification report indicates that the Department was unable to obtain a copy of any agreement stipulating payment of such a discount, nor was such payment found at any point during the Department's examination of particular sales. Similarly, the "discount for dealer's co-operation," a bonus arguably paid on the eve of the Chinese New Years as a goodwill gesture toward all its dealers, should be disallowed because Sampo has produced no evidence to substantiate it.

The Department should also disallow the "other discount (D) for sales target of sales representative" and "other discount (E) for sales development" because they are bonuses to Sampo employees, not payments to Sampo dealers. They are not in any way directly related to sales or prices of color televisions. Again, Sampo has not produced evidence to substantiate its claims for these two alleged discounts.

The "other discount (A) for quarter purchase of dealers" is overstated because Sampo apportioned the total discounts granted to color television receivers through a convoluted and improper formula. Instead, petitioners and General Electric offered an alternative formula.

DOC Response: We have used the verified lower figure for Sampo's rebate. We have disallowed Sampo's "quantity discount (A) to dealers per month" and "discount for dealer's cooperation," agreeing with the U.S. industry's reasoning. We have allowed the "sales target, " "sales development," and "quarterly purchases" discounts because we verified that the discounts were actually paid. The "sales target" and "sales development" discounts were paid either to sales representatives or to dealers.

Comment 11: Petitioners and General Electric claim that Sampo did not adequately explain the higher packing costs claimed for domestic sales. The cost of export packing should be higher. Tatung's comparable domestic packing costs are significantly lower than Sampo's claims. In the absence of an explanation of this discrepancy, the Department should at least cap the cost of domestic packing at the level of the export packing cost.

DOC Response: Although the packing costs reported do seem unusual, we verified the data and therefore we have used it. The discrepancy stems from a difference in labor costs, rather than materials costs.

Comment 12: Petitioners and General Electric claim that Sampo appears to have overstated the bad debt it incurred for color television sales. Sampo has a dealer mortgage procedure intended to prevent its dealers from defaulting on payment and to protect Sampo in the event of such a default. Sampo does not explain how the collateral pledged in the mortgage fails to offset its bad debt expense. Sampo's bad debt claim should therefore be disallowed.

DOC Response: We have disallowed Sampo's bad debt claim as either a direct or indirect selling expense, because there was no indication that the claimed expenses in fact were incurred on sales of color televisions.

Comment 13: The U.S. industry argues that Sampo's production engineering claim and Tatung's claims for the costs of design, market research, and new product testing should be denied as circumstance of sale adjustments. The are costs incurred regardless of whether sales are actually made. They are like other costs that do not logically corollate directly to the volume or value of sales (such as the depreciation of vehicles supplied to sales personnel or the overhead of a sales office). The Sampo and Tatung claims do not qualify as differences in merchandise adjustments for similar reasons. The costs essentially are research and development expenses—preproduction expenses, not differences in the cost of producing the sets caused by different product specifications. Production engineering is intended to ensure proper operation of the receiver, reduce the cost of production, introduce new features and materials, and enhance consumer appeal. The costs also have not been properly quantified since there has been no demonstration that knowledge gained in the domestic market did not benefit the exported merchandise and vice versa. The separation of the same functions into two geographic departments is immaterial.

Sampo argued that its claim for production engineering costs should be allowed since Sampo's separate production engineering departments for its domestic and export operations act independently of one another. It keeps separate cost records for each department, and can allocate these costs

directly to models produced for the domestic or export markets. The Taiwanese color television market is highly design conscious and manufacturers must provide a wide range of products with a variety of features different from those designed for export. To be competitive, Sampo has designed many models for sale in Taiwan, which have relatively short lives. Home market models use different licensed technology than U.S. market models. Other differences are cosmetic but involve engineering. Virtually none of Sampo's color television models are sold in both markets. Since these costs satisfy different requirements of the two markets, and are directly attributable to color televisions, they are appropriate circumstance of sale adjustments. Alternatively, they should be allowed as part of the differences in physical characteristics, because these departments are responsible for creating the physical differences between Sampo's domestic and U.S. models.

Tatung also stresses the design consciousness in Taiwan, and that Tatung incurs substantial costs in researching, designing and testing color television products in Taiwan. Similar costs are not incurred for the United States where consumer tastes are more standard and predictable. None of Tatung's models is sold in both markets. Tatung maintains a design department devoted exclusively to the development of televisions for the domestic market, and those costs are appropriately circumstances of home market sales.

DOC Response: Sampo's and Tatung's claims qualify neither as circumstance of sale adjustments nor as differences in physical characteristics. We consider research and development to be not directly related to sales. They are overhead expenses incurred in developing products for a market or in opening new markets for a product. Whether or not companies maintain separate departments for home market or export sales, we do not believe a company will segregate the knowledge it gains from research, designing, or testing incurred for one market from the knowledge gained or needed in other markets. Production engineering is not an allowable adjustment for differences in physical characteristics because it is commercially impossible to assume that engineering achievements are not distributed to all comparable merchandise regardless of market. Therefore, the costs attributed to these efforts should be equally allocated between differing markets.

Comment 14: Petitioners and General Electric comment that Sampo's claimed adjustments for physical differences are vastly overstated and should be diasallowed. General Electric engineers performed a detailed breakdown of Sampo models and found that Sampo has exaggerated the physical differences between the models in an attempt to mask dumping margins. General Electric also estimated cost differences by comparing schematic diagrams for claimed comparable models. General Electric's findings show cost differences significantly smaller than Sampo's claims. Finally, Sampo's claims cannot be considered verified when compared to the gross discrepancies and overstatement of differences discovered by General Electric's expert analyses.

DOC Responses: Our verification did not disclose any discrepancies in the costs of parts sampled. The data submitted by General Electric in support of its claim lack detail and back-up documentation. Because of our verification, and the lack of detail in the U.S. industry claim, we have allowed Sampo's claim.

Comment 15: Petitioners and General Electric commented that Sampo's goodwill adjustment is not directly related to the sales under consideration. It is not a cost incurred by Sampo, but an alleged premium which allows it to charge more to its domestic customers than to export customers. Commerce regulations generally require that claimed differences in circumstances of sale must "bear a direct relationship to the sales which are under consideration."

DOC Response: We agree. We do not consider goodwill to be a selling expense.

Comment 16: Tatung contends that the Department incorrectly rejected adjustments to its home market price for the costs of antennas, feeder wires, cloth dust covers and boosters supplied with sets sold in the domestic market but not included with sets sold in the U.S. The Department was incorrect in assuming that Tatung's home market price does not reflect the cost to Tatung of providing the accessories. The cost of these accessories is reflected in the unit price just as are all other parts' costs used in its manufacture. Accordingly, the cost for these physical differences should be allowed as an adjustment. While antennas and feeder wires are provided to all home market customers, dust covers and signal boosters are provided only to those who need them; including their cost in the unit price is analogous to providing warranty service to customers. Not all customers need warranty service; those who do, however, receive it "free of charge." Alternatively, the cost of providing the signal boosters and dust covers could be considered a circumstances of sale adjustment because the costs are directly related to the sale of color televisions in Taiwan.

Zenith approves of the Department's rejection of Tatung's claim. The Department has before it clear evidence that the cost of providing the additional equipment has not affected the value of the set. The court in *Smith-Corona* approved the Department's assumption that a demonstrated difference in cost causes a difference between U.S. prices and foreign market value, justifying an adjustment to foreign market value equal to the cost difference. Yet the court simultaneously warned the Department that: (1) Cost may not be blindly relied on to the exclusion of its effect on value, and (2) the Department's assumption is reasonable only in the absence of evidence that costs do not affect value.

The Tatung differences in merchandise claim is not analogous to a warranty claim because every purchaser receives a set plus a warranty. While only some sets may later incur warranty repair expenses, that does not rebut that everyone paid the same price for the same merchandise—a television and a warranty. However, Tatung sold sets at the same price whether or not the additional equipment was included. Therefore, the Department must conclude, as it did preliminarily, that the cost of occasionally providing additional equipment had no effect on the value of the merchandise.

DOC Response: We have now found that the prices of Tatung's sets did vary. Therefore we are allowing an adjustment for the cost of the parts.

Comment 17: Sanyo argues that the Department should not create margins solely because Sanyo had extraordinary air freight costs in order to meet its scheduled delivery date. These were the first color television sets exported by Sanyo from Taiwan to the United States. Sanyo Taiwan had fallen behind in its commercial production schedule and immediate air delivery to Sanyo's customers was necessary for the customers' 1982 Christmas selling season. Sanyo incurred international freight costs that were ten times as great as contemplated at time of sale and that did not recur during the period of investigation. The Department should adjust U.S price using Sanyo's average ocean freight costs, or exclude these particular sales from its fair value determination.

In the fair value stage of an antidumping proceeding, the Department

must decide whether to issue an antidumping order. Non-recurring extraordinary selling expenses should not be part of a fair value price comparison. Similarly, where a company is forced to use a costly method of shipping to meet a deadline, and where the company's post-sale decision does not result in its U.S. customer paying a lower price than what was agreed upon between the parties, the Department should not create an artificial margin of dumping.

Zenith opposes Sanyo's argument that the Department should use the best information available to estimate those freight costs. The Act directs the Department to reduce U.S price by the actual cost of freight, if freight was included in the price. Sanyo is proposing that it should not be held accountable for unintentional dumping caused by unanticipated high freight costs. The antidumping law, however, is unconcerned with whether the exporter intentionally sold at what later is found to be less than fair value.

Zenith states that although the "ordinary course of trade" requirement is not applicable to the U.S price calculation, it is presumably respondent's ordinary course of business to meet its contractual obligations to U.S. purchasers. Thus, there is no reason to conclude that Sanyo would not resort to air freight in the future if needed to meet some obligation or to satisfy some other commercial interest.

DOC Response: The shipments concerned occurred in volumes too high to be considered insignificant. Importations of televisions by air in commercial volumes occasionally occur and are not highly unusual. We will use Sanyo's actual air freight expenses on those sales rather than a best evidence substitute.

Comment 18: Petitioners and General Electric argue that the apportionment methodology used by Hitachi's U.S. selling arm, Hitachi Sales Corporation of America ("HSCA"), for rebates, cash discounts, credit, advertising and freight costs is invalid. HSCA averaged aggregate balance sheet expenses over sales of all products to derive a percentage estimate of the costs for color television sales. Petitioners and General Electric contend that the Department should have insisted on sale specific data. Color televisions may account for a porportionately higher share of the expense. Further, particular customers may have received more favorable treatment than others on particular sales.

DOC Response: We obtained during verification more specific data (particularly for rebates) than those reported by Hitachi in its response. We re-computed those adjustments for which averaging had a distortive effect. For the purposes of this investigation, the Department re-calculated the adjustments for rebates to certain large buying groups and credit expenses to all customers to reflect the costs directly related to sales of color television receivers.

For media advertising expenses, the Department used the averaged information submitted by HSCA. Although General Electric claims that HSCA must maintain separate accounting records by product category for media advertising expenses, we did not find any such evidence during verification of HSCA or indeed for any other company under investigation. For freight costs, we used HSCA's data rather than the costs presented by General Electric. We compared HSCA's rates with the sale-specific costs incurred by the other companies under investigation and found that HSCA's reported costs appeared adverse to HSCA. For cash discounts, we used HSCA's data for this investigation.

Comment 19: Petitioners and General Electric claim that the quantity discounts offered on certain reported sales do not correspond to HSCA's price lists. They consequently suggest that the price lists be disregarded for our calculations.

DOC Response: During verification, the Department found that the prices net of discounts quoted on HSCA's internal order sheets agreed with the price lists in effect during the perod of investigation. We also found that orders were sometimes split into two separately invoiced shipments, and the discounted price for the whole order appeared on both invoices. We have used the invoice price net of discounts as the starting price in our calculations and not the price lists.

Comment 20: Petitioner and General Electric argue that the interest expense incurred on purchases between Hitachi Taiwan and HSCA should be treated as a direct selling expense in calculating U.S. price. Further, the Department should require the actual expense for color televisions rather than the apportionment methodology used by HSCA.

DOC Response: We regard the interest expenses on transactions between Hitachi Taiwan and HSCA as indirect since they are intra-company expenses not directly related to sales to unrelated buyers in the U.S.

Comment 21: Petitioners and General Electric Challenge HSCA's use of an invoice line allocation in computing indirect selling expenses. They specifically disagree with respondent's apportionment of 50 percent of its claimed warehouse and administrative expenses using a ratio of lines per invoice devoted to color television. They state that HSCA should either provide detailed information, for example, on the exact warehouse space displaced by televisions, or allocate total general expenses over aggregate sales value.

Hitachi argues that allocating such expenses directly over sales does not accurately reflect the company's experience. Because expensive and inexpensive products require the same administrative expense to prepare an invoice, shipping document, etc., using only sales value may overstate the expense for color televisions. HSCA allocated only half of such expenses by invoice lines because the company said 50 percent was reasonable.

DOC Response: We have previously determined that allocation using invoice line ratios or the number of invoices generated by the merchandise under investigation is not appropriate. *See e.g.* the Department's final results of administrative review of the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada (49 FR 1263, January 10, 1984). In our calculations, therefore, we have allocated total indirect selling expenses over total sales.

Comment 22: Petitioners challenge HSCA's reduction of its bad debt expense by the excess bad debt reserve. They claim that we should include the total provision for bad debt contained in HSCA's profit and loss statements in our calculation of indirect selling expenses.

DOC Response: We agree with the petitioners. The accrued bad debt expense recorded in a company's final profit and loss statement should represent its bad debt experience for the fiscal year. This amount is normally based on an analysis of historical trends and current sales' collection experience.

Comment 23: Sanyo argues that the Department should determine foreign market value based on Sanyo's weighted average net selling price for the entire five-month period of investigation.

DOC Response: We usually use weighted averages that cover the entire investigatory period. During fair value investigations, we occasionally do not when a company changes prices or adjustments to price in the midst of the period.

Comment 24: Sanyo claims that the Department should allow all of its

adjustment claims for quantity incentives, sales promotional discounts, and early payment discounts. The Department's preliminary disallowance of portions claimed but not rebated should be reversed. The fact that Sanyo may not have actually paid the rebates in issue is irrelevant because it had a contractual obligation to pay a particular sum related to a particular sale. The time of payment does not affect: (1) The nature of the rebate; (2) whether Sanyo already has expensed that rebate on its books and records; (3) whether the rebate is directly related to the sale under consideraiton; or (4) whether the Department has sufficient evidence to verify the rebate amount.

DOC Response: We agree. Where we find that a company has accrued on its books an expense during an investigatory period, but has not yet paid it, we will allow that expense as an adjustment.

Comment 25: Petitioners and General Electric contend that the Department can only accept apportionment methodology limited to expenses undifferentiable as to product, and properly allocated to color television sales. Many of the expenses for which the respondents claimed adjustments should have been attributable to specific product lines. Yet respondents allocated those adjustments (e.g. rebates, credit, etc.) across all product lines.

Fulet, Sampo, and Tatung argue that the Department may apportion expenses claimed as circumstance of sale adjustments if those expenses bear a sufficiently direct relationship to the sales at issue. Petitioners' general attack on apportionment relies on *F. W. Myers* v. *United States,* 376 F. Supp. 860 (1974). However, the court in that case refused to allow an arbitrary allocation of general overhead costs between markets. The court did not reject apportionment as such. In the instant case the claimed costs are separately identified, quantified, and directly related to the sales under consideration. They are not overhead expenses indiscriminately lumped together.

DOC Response: We do not consider a company's reliance on allocation to be a *per se* demonstration of the direct relationship of an expense to sales. Generally, in considering whether to allow allocation of expenses, we require a company to provide the most detailed product-specific information contained in its book and records.

Comment 26: Orion commented that the Department should have preliminarily determined to exclude Orion from the antidumping proceeding based on its *de minimis* 0.01 percent margin. Further, Orion commented that the Department should not have suspended liquidation nor required a cash deposit or bond on entries of color television receivers produced by Orion. Finally, Orion claims that it should be excluded from any final determination of sales at less than fair value.

DOC Response: We are excluding Orion as part of this final affirmative determination and we are directing Customs to lift suspension of liquidation on all Orion entries of this merchandise. Orion will not be liable for antidumping duties.

Comment 27: Hitachi comments that it is entitled to exclusion from any final determination of sales at less than fair value because of the *de minimis* weighted-average margin found by the Department in its preliminary determination. Corrections of errors in the constructed value and ESP calculations will further reduce Hitachi's weighted-average margin below the already *de minimis* level.

DOC Response: We have corrected errors in our calculations and have made other adjustments as a result of our verifications of the Hitachi companies in Taiwan and California. As a result, we have found that Hitachi's final weighted-average margin is greater than 0.50 percent and is, thus, greater than *de minimis.* Therefore, we are not excluding Hitachi from our final determination.

Comment 28: AOC objects to the Department's method of computing general expenses for its constructed value. It claims, that, contrary to section 773(e)(1)(A) of the Act, we arbitrarily chose to average such expenses over two separate calendar years rather than the entire period of investigation. Because 1982 was a start-up year for AOC, its general expenses were relatively high. In 1983, however, AOC's general expenses averaged below the statutory 10 percent minimum. If we were to combine the two years, AOC's general expenses would approximate the 10 percent minimum. AOC also argues that the use of a company's actual general expenses is a "best evidence" approach. It claims the statute favors an industry standard for such expenses which must be averaged over the full period.

DOC Response: Our choice of a calendar year basis for general expenses is not arbitrary. We did so because AOC's fiscal year coincides with the calendar year. We prefer using fiscal year data because we can take account of year-end reversals and reconciliations of accounts, which usually occur at the final closing of books. Since these adjustments may significantly alter a company's previously recorded anticipated expenses, we believe the fiscal year is the most appropriate period.

We disagree that the Act favors an industry standard over a company's actual general expenses. Such a predilection runs contrary to the intent and purposes of the law. The Act and, indeed, past agency practice require an exact measurement of a company's constructed value for each model under investigation. We cannot disregard the general expenses experienced by a company in favor of an "industry average" which may have no relevance to the costs facing that company.

Comment 29: Zenith claims that the Department should reduce the ESP offset adjustment by the amount of selling expenses incurred in the home market for export sales to the United States. In ESP calculations, section 772(e)(2) does not remove from U.S. price all expenses incurred in selling to the United States, but only those incurred *in* the U.S. By stripping out of the home market price, under the ESP offset, indirect selling expenses incurred in the home market on the export sales, the Department has overcompensated for U.S. indirect selling expenses. The indirect selling expenses eligible for offset in the home market should be reduced by the amount of all selling expenses incurred in the home market for export sales to the U.S. The involved expenses may not and should not be stripped out of U.S. price. Section 772 of the Act and the administrative regulations do not contain authority to strip such expenses out of ESP. The appropriate mechanism for the adjustment is in the ESP offset regulation. Further, removal of such expenses from U.S. price would raise the maximum amount of ESP offset.

DOC Response: We agree with Zenith that an adjustment for the parent's expenses on the U.S. sales is appropriate. However, we have deducted the expenses from the U.S. price.

Fulet and Zenith both address Fulet's claims for warranty expenses, extension of certain U.S. sales to employees and sales representatives, and trade show expenses. Because we have chosen to use best information for Fulet, these issues are moot. Various companies pointed out clerical errors made in our preliminary determination. Where the Department agreed with the respondent, we corrected the calculation. We also discovered errors and corrected them.

Verification

In accordance with section 776(a) of the Act, we verified data used in making

this determination by on-site inspection of manufacturers' facilities and examination of company records and selected original source documentation containing relevant information.

Negative Determination of Critical Circumstances

Counsel for petitioners alleged that imports of color television receivers from Taiwan present "critical circumstances" within the meaning of section 735(e)(3) of the Tariff Act. Critical circumstances exist when the Department determines that: (1) There have been massive imports of the merchandise under investigation over a relatively short period; and (2) there is a history of dumping in the United States or elsewhere of the merchandise under investigation, or (3) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value.

The petitioner did not allege a history of dumping of Taiwanese television receivers. We therefore considered whether the person by whom, or for whose account, the product was imported knew or should have known that the exporter was selling such television receivers at less than fair value. We believe that, where margins are sufficiently large, it is reasonable for the Department to find that the importer knew or should have known that prices for sales to the United States (as adjusted according to the antidumping law) were significantly below home market prices. In this case, we have found that the margins are not sufficiently large to warrant finding that importers, even those which are related parties, knew or should have known that this product was being sold at less than fair value. Since there is no history of dumping and no basis for finding that importers knew, or should have known that the exporters were selling at less than fair value, we need not consider whether imports were massive. Therefore, we determine that critical circumstances do not exist with respect to color television receivers from Taiwan.

Suspension of Liquidation

In accordance with section 733(d) of the Act, on October 19, 1983, we instructed the U.S. Customs Service to suspend liquidation of all entries of color television receivers from Taiwan. As of the date of publication of this notice in the Federal Register, the suspension of liquidation will continue for all entries, or withdrawals from warehouse, for consumption of this merchandise except that manufactured and exported by Orion Electric (Taiwan) Co., Ltd.

Except for Orion, the Customs Service will require a cash deposit or the posting of a bond equal to the weighted-average margin amount by which the fair value of such merchandise exceeds the U.S. price. The suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer	Weighted-averate margin (percent)
AOC	3.50
Fu'et	23.77
Hitachi	1.20
Orion	0.01
RCA	2.89
Sampo	23.77
Sanyo	4.66
Tatung	8.10
All others	5.46

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping order, directing Customs officers to assess dumping duties on color television receivers from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S price.

William T. Archey,

Acting Assistant Secretary For Trade Administration.

February 23, 1984.

[FR Doc. 84-5512 Filed 2-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-056]

Certain Scissors and Shears From Brazil; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Revocation of Countervailing Duty Order.

SUMMARY: As a result of a request by the Government of Brazil, the International Trade Commission conducted an investigation and determined that revocation of the countervailing duty order on certain scissors and shears from Brazil would not cause injury to an industry in the United States. The Department of Commerce consequently is revoking the countervailing duty order. All entries of this merchandise made on or after July 17, 1981 shall be liquidated without regard to countervailing duties.

EFFECTIVE DATE: March 1, 1984.

FOR FURTHER INFORMATION CONTACT: John McKean or Barbara Williams, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On February 11, 1977, the Department of Treasury published in the Federal Register (42 FR 8634) an affirmative final countervailing duty determination on certain scissors and shears from Brazil.

On July 17, 1981, the International Trade Commission ("the ITC") notified the Department of Commerce ("the Department") that the Brazilian government had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979 ("the TAA"). It was not necessary for the Department, upon notification by the ITC, to suspend liquidation of entries of the merchandise pursuant to that section of the TAA, since previous suspensions remained in effect.

On December 1, 1983, the ITC notified the Department of its determination that an industry in the United States would not be materially injured, or threatened with material injury, by reason of imports of certain scissors and shears

from Brazil if the order were revoked (48 FR 55644). As a result, the Department is revoking the countervailing duty order concerning certain scissors and shears from Brazil with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after July 17, 1981, the date the Department received notification of the request for an injury determination.

The Department will instruct Customs officers to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after July 17, 1981 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to these entries.

The ITC's decision and this revocation do not affect shipments of the merchandise entered on or before July 16, 1981. These shipments are subject to the adminstrative review procedures set forth in section 751 of the Tariff Act of 1930.

This revocation and notice are in accordance wth section 104(b)(4)(B) of the TAA (19 U.S.C. 1671 note).

Dated: February 24, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-5585 Filed 2-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-029]

Fish Netting of Man-Made Fibers From Japan; Correction to Notice of Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination To Revoke in Part

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Correction to Notice of Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination To Revoke in Part.

SUMMARY: On February 1, 1984, the Department of Commerce ("the Department") published a notice of preliminary results of administrative review of and tentative determination to revoke in part the antidumping finding on fish netting of man-made fibers from Japan (49 FR 4026-4028).

The Department inadvertently omitted Hakodate Seimo Sengu Co., Ltd./Mitsui & Co., Ltd. from the list of manufacturers/exporters for which the Department has tentatively determined to revoke the finding. The Department has concluded that all sales by Hakodate Seimo Sengu Co., Ltd./Mitsui & Co., Ltd. to the United States were made at not less than fair value for a two-year period. As provided in § 353.54(e) of the Commerce Regulations, the firms have agreed in writing to an immediate suspension of liquidation and reinstatement in the finding if circumstances develop which indicate that Japanese fish netting of man-made fibers manufactured and exported by Hakodate/Mitsui is being sold by them to the United States at less than fair value.

Therefore, we tentatively determine to revoke the finding on fish netting of man-made fibers from Japan with regard to Hakodate Seimo Sengu Co., Ltd./Mitsui & Co., Ltd. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise manufactured and exported by Hakodate/Mitsui entered, or withdrawn from warehouse, for consumption on or after the date of publication of the initial notice, February 1, 1984.

EFFECTIVE DATE: March 1, 1984.

FOR FURTHER INFORMATION CONTACT: Laurie Lucksinger or Susan Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-1130.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

February 20, 1984.

[FR Doc. 84-5589 Filed 2-29-84; 8:45 am]

BILLING CODE 3510-25-M

[A-427-030]

Large Power Transformers From France; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on large power transformers from France. The review covers the one known exporter of this merchandise to the United States and consecutive periods from November 1, 1971 through May 31, 1983. The review indicates the existence of dumping margins during periods of the review.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value on all entries during the periods of review.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 1, 1984.

FOR FURTHER INFORMATION CONTACT: Carol Mitchell or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 1982, the Department of Commerce ("the Department") published in the Federal Register (47 FR 10268-69) the final results of its last administrative review of the antidumping finding on large power transformers from France (37 FR 11772, June 14, 1972) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that review. The substantive provisions of the Antidumping Act of 1921 ("the 1921 Act") and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980.

Scope of Review

Imports covered by the review are shipments of large power transformers ("transformers"); that is, all types of transformers rated 10,000 KVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination rectifier-transformer units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. Transformers covered by this finding are currently classifiable under items 682.0765 and 682.0775 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of French large power transformers to the United States, Alsthom-Atlantique, and consecutive periods from November 1, 1971 through May 31, 1983.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act or section 203 of the 1921 Act, as appropriate.

Purchase price was based on the duty-paid, delivered price with deductions, where applicable, for U.S. and foreign inland freight, ocean freight, insurance, handling, brokerage fees, commissions paid to unrelated parties and U.S. duties. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act or section 205 of the 1921 Act, as appropriate, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the ex-factory, packed price with an adjustment for differences in packing costs. We also made adjustments, where applicable, for differences in credit, warehousing, delayed delivery, damaged merchandise, and installation.

Further, we made an adjustment for differences in efficiency; that is, differences in internal transformer power losses, and for other differences in the physical characteristics of the merchandise. We adjusted, in part, for differences in the physical characteristics of transformers by deriving the theoretical price, for each of the transformers sold to the United States and each of the comparison transformers sold in the home market, by pricing the components of such transformers from price rules published in 1968 by the Westinghouse Electric Corporation. The Department then applied the ratio of the theoretical prices of the U.S. and home market transformers to the actual unadjusted home market transformer price. Where the above methodology could not be used, we made additional adjustments for differences in physical characteristics of the transformers being compared. For a further discussion of the methodology used to quantify physical differences, see the final results of the first administrative review of the antidumping finding on large power transformers from Japan (48 FR 26498–26504, June 8, 1983). No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Period	Margin (percent)
Nov. 1, 1971 to Oct. 23, 1972	54.96
Oct. 24, 1972 to Sept. 28, 1974	70.52
Sept. 29, 1974 to May 11, 1980	0
May 12, 1980 to May 31, 1983	0

Alsthom-Atlantique requested revocation of the finding. In order to qualify for revocation, the Department requires, at a minimum, that a firm demonstrate that it had:

(1) Two years of sales at not less than fair value, or

(2) Four years of no shipments, or

(3) A three-year combination of at least one year of sales at not less than fair value and two years of no shipments.

While Alsthom arguable has met requirement (2), we will not consider revocation of the finding pending U.S. entry of Alsthom units sold in January 1979 and not covered by this review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, the Department shall not require a cash deposit of estimated antidumping duties, as provided for in section 353.48(b) of the Commerce Regulations, on shipments of French large power transformers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: February 21, 1984.

Alan F. Holmer,

Deputy Assistance Secretary for Import Administration.

[FR Doc. 84-5595 Filed 2-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-081]

Polyvinyl Chloride Sheet and Film From Taiwan; Final Results of Administrative Review of Antidumping Finding and Revocation in Part

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding and Revocation in Part.

SUMMARY: On November 28, 1983, the Department of Commerce published preliminary results of its administrative reivew and intent to revoke in part the antidumping finding on polyvinyl chloride sheet and film from Taiwan. The review covers the 31 known manufacturers and/or exporters and two known third-country resellers of this merchandise to the United States currently covered by the finding. The review covers varying periods from January 1, 1980 through November 10, 1982.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results and the intent to revoke in part. One importer provided one comment. After our consideration of the comment received, we corrected a clerical error. The final results of review are the same as the preliminary results for the remaining firms.

EFFECTIVE DATE: March 1, 1984.

FOR FURTHER INFORMATION CONTACT: Laurie A. Lucksinger or Susan M. Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On November 28, 1983, the Department of Commerce ("the Department") published in the Federal Register (48 FR 53586–8) the preliminary results of its administrative review and intent to revoke in part the antidumping finding on polyvinyl chloride sheet and film from Taiwan (43 FR 28457, June 30, 1978). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of unsupported flexible, calendered polyvinyl chloride ("PVC") sheet, film, and strips, over 6 inches in width and over 18 inches in length, and at least 0.0002 inch but not over 0.020 inch in thickness, currently classifiable under item numbers 771.4312 and 774.5595 of the Tariff Schedules of the United States Annotated.

The review covers the 31 known manufacturers and/or exporters and two known third-country resellers of Taiwanese PVC sheet and film to the United States currently covered by the finding. The review covers varying periods from January 1, 1980 through November 10, 1982.

The Department has determined not to cover Taiwan Upholstery Furniture Export Supplies Ltd. in this or future 751 reviews. That firm is no longer in business.

Analysis of Comments Received

Interested parties were given an opportunity to submit oral or written comments on the preliminary results. We received one comment.

Comment: Clopay Corporation seeks correction of a clerical error. The Department listed Clopay in the preliminary results as a manufacturer/exporter. Clopay advised the Department that it is an importer of polyvinyl chloride sheet and film.

Department's Position: We agree and have deleted Clopay from the list.

Rinal Results of the Review and Revocation in Part

After receiving the comment from Clopay we have withdrawn Clopay from the manufacturer/exporter list. For the other firms, the final results of our review are the same as those presented in our preliminary results of review and we determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Asiam International Inc	6/1/81 to 5/31/82	11.37
Brave Dragon Industry Ltd	6/1/81 to 5/31/82	5.9
Bueno Manufacturing Co	7/1/81 to 6/30/82	[1]0
Cathay Plastic Industry Co., Ltd.	7/1/81 to 11/10/82	[1]0
Chien YW Enterprise Corp	7/1/81 to 5/31/82	[1]0
Collins Co., Ltd	6/1/81 to 5/31/82	5.92
Diamond Shamrock Trading Corp.	6/1/81 to 5/31/82	[1]0
Essex Sporting Goods Corp.	6/1/81 to 5/31/82	[1]5.9
Fashion Plastics Fabrication Co., Ltd.	6/1/81 to 5/31/82	[1]5.9
Formosa Shoe Industry	6/1/81 to 11/10/82	[1]0
Jamecle Corp	6/1/81 to 5/31/82	[1]0
Kangel Enterprise, Inc	1/1/81 to 5/31/82	11.37
Key Sheen Industry Co., Ltd.	6/1/81 to 5/31/82	11.37
Le Yang Inc	6/1/81 to 11/10/82	0
Long Joy Enterprises Co., Ltd.	6/1/81 to 5/31/82	[1]5.9
Long-Prosper Enterprise Co., Ltd.	6/1/81 to 5/31/82	11.37
Nan Lung Plastics Co., Ltd	6/1/81 to 5/31/82	11.37
Odin Industries Co., Ltd	6/1/81 to 5/31/82	[1]11.37
Orchard Corp. Of Taiwan Ltd.	1/1/81 to 5/31/82	0
Progress Plastics Co., Ltd	6/1/81 to 5/31/82	0
Rosy Plastics Co., Ltd	1/1/81 to 5/31/82	0
Sen Chang Plastics	6/1/81 to 5/31/82	[1]11.37
Sequence Co., Ltd	6/1/81 to 5/31/82	[1]0
Tarner Enterprises Co.	7/1/81 to 5/31/82	[1]0
Taur Yang Enterprises Co., Ltd.	6/1/81 to 5/31/82	11.37
Truly Enterprises Co., Ltd	6/1/81 to 5/31/82	11.37
Union Industries Ltd	6/1/81 to 5/31/82	11.37
Wan Chang Lung Trading Co., Ltd.	6/1/81 to 5/31/82	5.9
Wen Fung Industries Co., Ltd.	6/1/81 to 5/31/82	[1]0
Winport Marketing Ltd	1/1/80 to 5/31/82	0
Yung Chieh Enterprises Co., Ltd.	6/1/81 to 5/31/82	0
THIRD-COUNTRY RESELLER/COUNTRY		
Hop Kay Hong/Hong Kong	6/1/81 to 5/31/82	11.37
Lot Heng (PVC Co.), Ltd./Hong Kong.	6/1/81 to 11/10/82	[1]0

[1] No shipments during the period.

Also as a result of our review the Department revokes the antidumping finding on PVC sheet and film from Taiwan with respect to Cathay Plastic Industry Co., Ltd. and three firms that ship only PVC sheet and film manufactured by Cathay and that only sell the merchandise to the U.S. These three firms are:

Formosa Shoe Industry
Le Yang Inc.
Lot Heng (PVC Co.) Ltd/Hong Kong

This partial revocation applies to all shipments of this merchandise from these firms manufactured by Cathay and entered, or withdrawn from warehouse, for consumption on or after November 10, 1982, the date of publication of our tentative determination to revoke with regard to these four firms.

The Department also revokes the findings with respect to the following five firms. Revocation for these firms was deferred from our last administrative review. The five firms previously only shipped PVC sheet and firm manufactured by Nan Ya Plastics Corp. and only marketed the merchandise to the U.S. We revoked the finding with respect to Nan Ya in our last administrative review.

Bueno Manufacturing Co.
Chien YW Enterprises Corp.
Jamecle Corp.
Tarner Enterprises Co.
Wen Fung Industries Co., Ltd.

This partial revocation applies to all shipments of this merchandise from these five companies manufactured by Nan Ya and entered, or withdrawn from warehouse, for consumption on or after June 26, 1981, the date of publication of our tentative determination to revoke with respect to Nan Ya.

The Department shall determine, and the U.S. Customs Services shall assess, dumping duties on all appropriate entries with purchase dates during the period involved. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required on all shipments of PVC sheet and film from the remaining firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. For any future entries from a new exporter not covered in this or prior reviews, whose first shipment occurred after November 10, 1982 and who is unrelated to any reviewed firm, no cash deposit shall be required. These deposit requirements shall remain in effect until publication of the final results of the next administrative review. The Department is beginning immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orderes, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review, revocation in part, and notice are in accordance with section 751(a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: February 22, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-5[illegible] Filed 2-29-84; 8:45 am]
BILLING CODE 3510-25-M

[A-588-086]

Spun Acrylic Yarn From Japan; Preliminary Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on spun acrylic yarn from Japan. The review covers the thirteen known manufacturers and/or exporters of this merchandise to the United States and the period April 1, 1982 through March 31, 1983. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

As a result of the review, the Department has preliminarily determined to require cash deposits of estimated antidumping duties on future entries equal to the margins calculated on the last known shipments. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 1, 1984.

FOR FURTHER INFORMATION CONTACT: Barbara J. Victor or Susan M. Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On October 8, 1982, the Department of Commerce ("the Department") published in the Federal Register (47 FR 44600-1) the final results of its last administrative review of the antidumping duty order on spun acrylic yarn from Japan (45 FR 24127, April 6, 1980) and announced its intent to immediately conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of spun acrylic plied yarn for machine knitting, currently classifiable under items 310.5015 and 310.5049 of the Tariff Schedules of the United States Annotated.

The review covers the thirteen known manufacturers and/or exporters of Japanese spun acrylic yarn to the United States and the period April 1, 1982 through March 31, 1983. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties equal to the following percentages of the entered value shall be required.

Japanese exporter	Cash deposit (percent)
Mitsui & Co., Ltd. (Mfr: Kanegafuchi Chem. Ind. Co., Ltd.)	[1] 0
Diafibers Co., Ltd.	
(Mfr: Japan Exlan Corp.)	[1] 18.33
(Mfr: Mitsubishi Rayon Co., Ltd.)	[1] 20.26
C. Itoh & Co., Ltd.	
(Mfr: Asahi Chem. Ind. Co., Ltd.)	[1] 29.05
(Mfr: Mitsubishi Rayon Co., Ltd.)	[1] 20.26
Gunze Sangyo, Inc. (Mfr: Asahi Chem. Ind. Co., Ltd.)	[1] 29.05
Teijin Shoji Kaisha, Ltd. (Mfr: Asahi Chem. Ind. Co., Ltd.)	[1] 29.05
Itoman & Co., Ltd. (Mfr: Japan Exlan Corp.)	[1] 18.33
Nissho Iwai Corp. (Mfr: Japan Exlan Corp.)	[1] 18.33
Mitsubishi Corp. (Mfr: Mitsubishi Rayon Co., Ltd.)	[1] 20.26

[1] No shipments during review period.

For any future entries from a new exporter not covered in this or prior reviews, whose first shipments occurred after March 31, 1983 and who is unrelated to any reviewed firm, a cash deposit of 29.05 percent shall be required. These deposit requirements are effective for all shipments of Japanese spun acrylic yarn entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: February 22, 1984.

Alan F. Holmer.

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-5594 Filed 2-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-004]

Steel Reinforcing Bars From Canada; Preliminary Results of Adminstrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on steel reinforcing bars from Canada. The review covers the only manufacturer covered by the finding, Western Canada Steel Limited, and the two other known exporters to the United States of this merchandise manufactured by Western Canada Steel Limited. The review period is April 1, 1982 through March 31, 1983. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

As a result of the review, the Department has preliminarily determined to require cash deposits of estimated antidumping duties on future entries equal to the margins calculated on the last known shipments. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 1, 1984.

FOR FURTHER INFORMATION CONTACT: Doug Shaddix or Susan Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 1983, the Department of Commerce ("the Department") published in the Federal Register (48 FR 22176) the final results of its last administrative review of the antidumping finding on steel reinforcing bars from Canada (29 FR 5341-5342, April 21, 1964) and announced its intent to conduct immediately the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of steel reinforcing bars from Canada, manufactured by Western Canada Steel Limited, currently classifiable under items 606.7900 and 606.8100 of the Tariff Schedules of the United States Annotated.

The review covers Western Canada Steel Limited and the two other known exporters, Rhodes Vaughan and Co., Limited and Russelsteel Limited, to the United States of Canadian steel reinforcing bars manufactured by

Western Canada Steel Limited. The review period is April 1, 1982 through March 31, 1983. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 6.40 percent shall be required on all shipments of Canadian steel reinforcing bars manufactured by Western Canada Steel Limited entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: February 22, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-5597 Filed 2-29-84; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Application for U.S. Government Bill(s) of Lading/Domestic Route Order/ Export Traffic Release

DD Form 1659 is used by DOD contractors to apply for prepared Government Bills of Lading (GBL), Domestic Route Orders, or Export Traffic Release(s) when the Government is responsible for payment of transportation charges. Contractor benefits in that contractor funds are not obligated and administration of shipment is handled by the Government.

Businesses or others for profit/Federal agencies or employees/small businesses or organizations, 30,000 respondents; 75,000 hours.

Forward comments to Mr. Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, D.C. 20301, telephone (202) 694-0187.

A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD MI&L(PI), Room 3C800, Pentagon, Washington, D.C. 20301, telephone (202) 695-0643. This is an extension of an existing collection and not for contract.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

February 27, 1984.

[FR Doc. 84-5558 Filed 2-29-84; 8:45 am]

BILLING CODE 3810-01-M

DoD-University Forum Working Group on Export Controls; Advisory Committee Meeting

The Working Group on Export Control of the DoD-University Forum will meet in open session on March 19, 1984, from 10:00 until 4:00 p.m., at Number 1 Dupont Circle, Washington, D.C. 20036.

The Mission of the DoD-University Forum Working Group on Export Controls is to assess the impact on universities of proposed international controls.

The meeting is scheduled to: (1) Convene the Working Group as an official advisory body to the DoD-University Forum, (2) discuss the impact of the new authority that allows DoD to withhold technology data from public disclosure, and (3) to discuss DoD's International Technology Transfer Panel and Subpanels interactions with the university community.

Public attendance will be accommodated as space permits. Public attendees are requested to telephone Mr. Frank Sobieszczyk in the DoD Office of Research and Laboratory Management on Area Code (202) 694-0205 before COB March 9, 1984, to be advised of the meeting room number and seating accommodations.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

February 27, 1984.

[FR Doc. 84-5557 Filed 2-29-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Solar Photovoltaic Energy Advisory Committee; Renewal

Notice is hereby given that the Solar Photovoltaic Energy Advisory Committee which was established in accordance with Pub. L. 95-590, the Solar Photovoltaic Energy Research, Development, and Demonstration Act of 1978, has been renewed for a 2-year period ending on February 15, 1986.

The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), the Solar Photovoltaic Energy Research, Development, and Demonstration Act of 1978 (Pub. L. 95-590), the GSA Interim Rule on Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee may be obtained from Gloria Decker (202-252-8990).

Issued at Washington, D.C., on February 24, 1984.

K. Dean Holms,

Advisory Committee Management Officer.

[FR Doc. 84-5523 Filed 2-29-84; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-84-005;OFP Case No. 53012-1864-01-02-12]

Petition for Exemption; the University of Michigan

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by The University of Michigan for its Ann Arbor, Michigan Facility.

On January 25, 1984, the University of Michigan (Michigan) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act") for two new boilers to be located at its Central Powerplant in Ann Arbor, Michigan. Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new major fuel burning installation (MFBI). Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed new Boilers No. 1 and No. 2 will have a combined capacity to generate 220,000 pounds per hour of steam at a pressure of 400 psig and 750° F superheat and have the capability of being fired by either natural gas or oil. A 10,000 KW turbine-generator will also be installed to expand the Central Powerplant cogeneration capacity. It is expected that less than fifty percent of the net annual electric power generation of the petitioner's turbine generator will be sold to the Detroit Edson Company, making the cogeneration facility a major fuel burning installation in accordance with the definition of "electric generating unit" contained in 10 CFR 500.2.

ERA has determined that the amended petition appears to include sufficient evidence to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 50.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing. The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, from 8:00 a.m. to 4:00 p.m, Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the Federal Register.

DATE: Written comments are due on or before April 16, 1984. A request for a public hearing must be made within this same 45-day period.

ADDRESS: Fifteen copies of written copies or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-033, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Docket No. ERA-FC-84-05 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Roland DeVries, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, D.C. 20585, Phone (202) 252-6002.

Marya Rowan, Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-141, 1000 Independence Avenue, SW., Room GA-093, Washington, D.C. 20585, Phone (202) 252-6739.

SUPPLEMENTARY INFORMATION: The petitioner proposes to install two natural gas fired boilers, with oil firing capability, to provide necessary steam to university facilities including a new hospital. These new units each have steam capacity, at a maximum design load, of 110,000 pounds of steam per hour. They each will demand heat input of greater than 100 million Btu's per hour and have a combined electric generating capacity of 10 MW.

The cogeneration facility is classified as a major fuel burning installation under FUA because less than 50 percent of its net annual electric generation will be sold.

Section 121(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of 503.37(a)(1), Michigan has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of Boilers No. 1 and No. 2, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in Boilers No. 1 and No. 2, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), Michigan has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will published a Notice of Intent to prepare an EIS in the Federal Register as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Michigan is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., on February 23, 1984.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-5524 Filed 2-29-84; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: Under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Department of Energy (DOE) notices of proposed collections under review will be published in the Federal Register on the Thursday of the week following their submission to the Office of Management and Budget (OMB). Following this notice is a list of the DOE proposals sent to OMB for approval. The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATES: Last Notice published Thursday, February 2, 1984 (49 FR 4128).

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Forms Clearance and Burden Control Division, Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC. 20585, (202) 252-2308

Vartkes Broussalian, Federal Energy Regulatory Commission Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC. 20503, (202) 395-7313

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer for the appropriate agency as shown above.

If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., February 27, 1984.

John Gross,

Acting Director, Statistical Standards, Energy Information Administration.

DOE FORMS UNDER REVIEW BY OMB

Form number	Form title	Type of request	Response frequency	Response obligation	Respondent description	Estimated number of respondents	Annual respondent burden	Abstract
(1) EIA-856 (Formerly EP-51).	(2) Monthly foreign crude oil acquisition report.	(3) Revision	(4) Monthly	(5) Mandatory	(6) Firms that were reporting data on Form ERA-51 as of June 1982, and all other firms that acquired more than 500,000 bbls of foreign crude oil in the report month.	(7) 57	(8) 4392	(9) Form EIA-856 collects data on costs and quantities of foreign crude oil acquired for importation into the U.S. and its territories and possessions. Data are used to calculate price indices by BLS, in analysis of consumption, production and prices of fuels worldwide, in modeling and forecasting and for matching crude oil shipments. Aggregated data are published in the Monthly Energy Review.

[FR Doc. 84-5866 Filed 2-29-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. G-2570-001, et al.]

Aminoil Inc.; Corporate Name Change

February 24, 1984.

Take notice that on November 15, 1983, Aminoil Inc. of Post Office Box 94193, Houston, Texas 77018, filed in Docket No. G-2570-001, *et al.*, an application to amend certificates of public convenience and necessity issued to Aminoil USA, Inc. and the related Gas Rate Schedules as listed in the attached Appendix to reflect a change of name from Aminoil USA, Inc. to Aminoil Inc.

Effective August 1, 1983 Aminoil USA, Inc. changed its name to Aminoil Inc. Aminoil Inc. amended its Certificate of Incorporation with the State of Delaware to reflect its new corporate name.

Notice is hereby given that all the certificates and rate schedules as listed in the attached Appendix are hereby redesignated to reflect the corporate name change from Aminoil USA, Inc. to Aminoil Inc. effective August 1, 1983.

Kenneth F. Plumb,

Secretary.

CERTIFICATES AND RATES SCHEDULES OF AMINOIL USA, INC. FOR REDESIGNATION AS AMINOIL INC.

Rate Schedule No.	Docket No.	Purchaser
[1] 1	G-2570	Cities Service Gas Co.
[1] 3	G-9223	Montana-Dakota Utilities Co.
[2] 4	G-11627	El Paso Natural Gas Co.
8	CI61-1271	Montana-Dakota Utilities Co.
[1] 10	CI64-612	Northwest Central Pipeline Co.
[1] 14	G-3378	Lone Star Gas Co.
[1] 15	CI62-69	Lone Star Gas Co.
[1] 16	CI63-334	Lone Star Gas Co.

CERTIFICATES AND RATES SCHEDULES OF AMINOIL USA, INC. FOR REDESIGNATION AS AMINOIL INC.—Continued

Rate Schedule No.	Docket No.	Purchaser
[2] 17	CI68-639	Transcontinental Gas Pipe Line Corp.
19	CI69-939	Transwestern Pipeline Co.
[2] 20	CI69-949	Sea Robin Pipeline Co.
[2] 21	CI69-1097	Southern Natural Gas Co.
[1] 24	CI66-20	Lone Star Gas Co.
[1] 27	CI70-375	Panhandle Eastern Pipe Line Co.
[1] 29	G-6668	Lone Star Gas Co.
[1] 30	CI62-739	Lone Star Gas Co.
[1] 31	CI63-577	Lone Star Gas Co.
[1] 33	G-6668	Lone Star Gas Co.
[1] 34	CI71-226	Lone Star Gas Co.
[1] 35	CI71-910	Lone Star Gas Co.
39	CI74-735	Texas Eastern Transmission Corp.
[1] 40	CI75-225	Tennessee Gas Pipeline Co.
41	CI75-484	El Paso Natural Gas Co.
42	CI78-166	Northwest Pipeline Corp.
43	CI77-655	Texas Eastern Transmission Corp.
[1] 44	CI78-632	El Paso Natural Gas Co.
45	CI78-1061	Florida Gas Transmission Co.
46	CI78-1279	Texas Eastern Transmission Corp.
47	CI79-137	Texas Eastern Transmission Corp.
[1] 48	CI79-170	Natural Gas Pipeline Co. of America
49	CI78-933	El Paso Natural Gas Co.
50	CI79-577	Transcontinental Gas Pipe Line Corp.
[1] 51	CI78-910	United Gas Pipe Line Co.
[1] 52	CI80-457	Tennessee Gas Pipeline Co.
53	CI80-458	Tennessee Gas Pipeline Co.
54	CI80-452	Michigan Wisconsin Pipe Line Co.
55	CI80-453	Michigan Wisconsin Pipe Line Co.
[1] 56	CI80-486	Columbia Gas Transmission Corp.
57	CI81-361-000	Texas Eastern Transmission Corp.
53	CI81-367-000	Texas Eastern Transmission Corp.
59	CI81-407-000	Texas Eastern Transmission Corp.
[1] 60	CI77-244	Columbia Gas Transmission Corp.
61	CI77-853	Columbia Gas Transmission Corp.
[1] 62	CI76-209	Natural Gas Pipeline Co. of America.
[1] 63	CI76-379	Trunkline Gas Co.
64	CI76-327	Transcontinental Gas Pipe Line Corp.
65	CI77-656	Natural Gas Pipeline Co. of America.
[1] 67	CI78-751	Natural Gas Pipeline Co. of America.
[1] 68	CI78-752	Natural Gas Pipeline Co. of America.
[1] 69	CI78-135	Natural Gas Pipeline Co. of America.
70	CI79-90	Natural Gas Pipeline Co. of America.
[1] 71	CI79-171	Transcontinental Gas Pipe Line Corp.
[1] 72	CI79-454	Natural Gas Pipeline Co. of America.
[1] 73	CI79-455	Natural Gas Pipeline Co. of America.
[1] 74	CI79-459	Natural Gas Pipeline Co. of America.
75	CI79-576	Natural Gas Pipeline Co. of America.
76	CI79-578	Natural Gas Pipeline Co. of America.
77	CI80-451	Sea Robin Pipeline Co.
78	CI81-118-000	Natural Gas Pipeline Co. of America.
[1] 79	CI81-356-000	Michigan Wisconsin Pipe Line Co.
[2] 80	CI60-399	Tennessee Gas Transmission Co.
[1] 81	CI61-173	Southern Natural Gas Co.
[1] 82	CI66-1303	Trunkline Gas Co.

CERTIFICATES AND RATES SCHEDULES OF AMINOIL USA, INC. FOR REDESIGNATION AS AMINOIL INC.—Continued

Rate Schedule No.	Docket No.	Purchaser
[1] 83	CI68-538	Southern Natural Gas Co.
[2] 85	CI60-607	Southern Natural Gas Co.
86	CI80-204	Tennessee Gas Pipeline Co.
87	CI82-215	Natural Gas Pipeline Co. of America.
88	CI82-209-000	Tennessee Gas Pipeline Co.
89	CI82-303-000	Trunkline Gas Co.
90	CI82-310-000	Texas Eastern Transmission Corp.
91	CI82-313-000	Transcontinental Gas Pipe Line Corp.
92	CI82-315-000	Transcontinental Gas Pipe Line Corp.
93	CI82-357-000	Transcontinental Gas Pipe Line Corp.
94	CI82-358-000	Transcontinental Gas Pipe Line Corp.
[1] 95	CI79-219	Natural Gas Pipeline Co. of America.

[1] Operator—For self only.
[2] Operator, et al.

Pending Proceedings in Which Aminoil USA, Inc. Is a Party-Applicant or Party-Respondent

NPGA Protest Proceedings Under Order No. 23-B

Docket Nos. GP80-5, GP80-11, GP80-15, GP80-19, GP80-20, GP80-21, GP80-24, GP80-26, GP80-29, GP80-31, GP80-35, GP80-40, GP80-41, and GP80-42.

Other Proceedings

Docket No. IN83-2

[FR Doc. 84-5494 Filed 2-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA84-2-000]

Eastern Edison Co.; Proceedings Under Part 41 of the Commission's Regulations

February 24, 1984.

Take notice that, by letter dated December 20, 1983, Eastern Edison Company (Eastern Edison) responded to a letter order of the Commission issued on November 25, 1983. In the November 25 letter order, the Commission noted Eastern Edison's disagreement with respect to Correcting Entry No. 3 of the Commission Staff's audit of the company's books and records, which involves restatement of the accumulated provision for depreciation. Eastern Edison states, in its December 20 letter, that it consents to the disposition of this issue in accordance with the shortened procedures provided for under Part 41 of the Commission's regulations.

Therefore, any interested party, including the Commission Staff, may file a brief as prescribed in §§ 41.3 through 41.5 of the Commission's regulations. A brief may be accompanied by a notice of intervention in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

The following procedural schedule is established:

(1) initial briefs adn notices of intervention shall be due no later than 30 days after the date of publication of this notice in the Federal Register; and

(2) reply briefs shall be due no later than 20 days thereafter.

All briefs and notices of intervention must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5490 Filed 2-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-188-000, et al.]

Kansas Power and Light Co.; Order Accepting for Filing and Suspending Rates, Ordering Summary Disposition in Part, Noting Interventions, Consolidating Dockets, Granting Waiver of Notice, and Establishing Hearing Procedures

Issued: February 23, 1984.

On January 3, 1984, Kansas Power and Light Company (KPL) tendered for filing an unexecuted interim agreement and related service schedules for partial requirements and wheeling service to Kansas Electric Power Cooperative, Inc. (KEPCo).[1] KPL states that this filing was submitted in accordance with a settlement with KEPCo to terminate litigation on a motion for a preliminary injunction filed by KEPCo in the Federal District Court for the District of Kansas (Case No. 83-6065). Although, to date, KPL has provided KEPCo with firm full requirements service, the company proposes by this submittal to convert KEPCO's service to accommodate KEPCo's purchase of 10 MW of energy from the Southwestern Power Administration (SWPA).[2] The term of

[1] *See* Attachment A for rate schedule designations. The member cooperatives of KEPCo are listed on Attachment B. When the contracts between the member cooperatives and KPL expired on May 16, 1983 (KPL's contract with P.R. & W. Electric Cooperative Association, Inc. expires in 1988), KEPCo became the supplier of power and energy to its member systems in the KPL service territory.

[2] On November 10, 1983, to accomodate other SWPA transactions, KPL made similar filings applicable to partial requirements and wheeling service for Kaw Valley Electric Cooperative, Inc., Nemaha-Marshall Electric Cooperative Association, Inc., and Doniphan Electric Cooperative Association, Inc. (collectively, the Cooperatives) in

Continued

the proposed agreement is limited to six months, during which time, KPL plans to negotiate a long-term contract with KEPCo. If, at the expiration of this term or any extensions, KPL and KEPCo have been unable to execute a long-term agreement for service, the company proposes to resume full requirements service pursuant to KPL's rate schedules filed in Docket No. ER83-418-000. KPL requests waiver of the notice requirements to permit the proposed agreement and rate schedules to become effective on January 1, 1984, the effective date of SWPA's sale to KEPCo.[3]

Notice of KPL's filing was published in the Federal Register, with comments due on or before January 25, 1984 (49 FR 1551). Kaw Valley Electric Cooperative, Inc., Nemaha-Marshall Electric Cooperative Association, Inc., and Doniphan Electric Cooperative Association, Inc. (the Cooperatives) filed a timely motion to intervene, raising no substantive issues. KEPCo also filed a timely motion to intervene.

KEPCo incorporates by reference its objections filed in Docket No. ER83-418-000, and also protests other matters specific to this filing, including the company's failure to modify its full requirements rates proposed in Docket No. ER83-418-000 for partial requirements service.[4] KEPCo requests that the Commission summarily reject the proposed six-month term and automatic termination provision of the agreement and rate schedules, claiming: (1) That six months is not long enough for the parties to successfully negotiate a long-term contract; (2) that section 35.15 of the Commission's regulations prohibits such a premature notice of termination of service; and (3) that, if negotiation of a new contract is not successful by June 30, 1984 (the expiration of the six-month term), KPL's resumption of full requirements service would result in KEPCo being deprived of delivery of its SWPA entitlement. In addition, KEPCo requests summary rejection of: (1) A contract provision restricting delivery of SWPA power to a single interconnection point; and (2) a provision which states that the interim power and transmission schedule shall be void if the Commission orders any revisions of the schedule.

Finally, KEPCo requests that this docket be consolidated with Docket Nos. ER83-418-000, *et al.*, citing cost of service issues common to all of the dockets. While requesting that the proposed rates be suspended, KEPCo concurs in KPL's request for waiver of the notice requirements, stating that the January 1, 1984 effective date is necessary in order for KEPCo to obtain the desired service from SWPA.

By answer filed on February 9, 1984, KPL responded to KEPCo's pleading. While not objecting to the motions for intervention or consolidation, the company opposes KEPCo's protests and requests for summary disposition. KPL reaffirms that its filing merely implements the settlement entered into between KPL and KEPCo, whereby KEPCo agreed to withdraw its motion for injunctive relief before the United States District Court in exchange for the company's filing of this power and transmission agreement. In support of its contention that summary rejection of any of the proposed contractual provisions is inappropriate, KPL avers that this filing is fully consistent with the terms of the settlement, referring to a December 28, 1983 letter signed by its General Counsel and incorporated into the filed tariff, which KPL states is the only memorial of the settlement agreement. The company further argues that additional interim relief from the specific terms and conditions of this partial requirements and wheeling service to KEPCo is available only through a proceeding under sections 211 and 212 of the Federal Power Act or through a renewed motion for Federal injunctive relief. Finally, KPL asserts that issues involving all of the underlying terms of such service should be decided on the basis of an evidentiary record.

Discussion

Under Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motions to intervene serve to make KEPCo and the Cooperatives parties to this proceeding.

Upon consideration of the filing and all of the pleadings, we shall summarily reject the proposed provision purporting to render the filing void if the Commission orders any modifications. In this regard, we note that KPL acknowledges that its filing is intended to fully implement the settlement agreement with KEPCo and that the company's December 28, 1983 letter included in the filing is the only memorial of the settlement. The letter states, in relevant part, that:

> [the tariff] shall be on terms which KPL considers reasonable under the circumstances, *subject, of course, to FERC review.* KPL shall provide power supply and transmission service in accordance with the filing tariff *as such tariff may be modified by order of the FERC* (emphasis added).

Given the company's own representations concerning the impact of the settlement agreement on this filing we must conclude that the letter memorializing the settlement controls over inconsistent terms in the proposed unexecuted agreement. The letter was drafted by the company and our reading of the breadth of its provisions is consistent with that of KEPCo, which presumably withdrew its court action in consideration of the agreement. Accordingly, because the provision which would unilaterally restrict the Commission's authority to revise the tariff conflicts with the language of the December 28, 1983 letter cited above, we find summary rejection of that provision to be appropriate.

However, since KEPCo's other objections to the proposed rate schedule provisions present factual issues best resolved at a hearing, we believe that summary rejection of these provisions in inappropriate. We shall, therefore, deny the remainder of KEPCo's requests for summary disposition. However, we note that, to the extent that the proposed schedule provides for self-termination and the resumption of full requirements service to KEPCo after six months, these terms cannot be implemented automatically and unilaterally under our filing requirements. See 18 CFR 35.15. Thus, termination of the power and

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Docket Nos. ER84-79-000, ER84-80-000, and ER84-81-000, respectively. By order issued on December 30, 1983, the Commission accepted for filing and suspended those rates, to become effective on January 1, 1984, and consolidated those dockets with KPL's pending general rate increase filed in Docket No. ER83-418-000. 25 FERC ¶61,465. *See* 23 FERC ¶61,330 (1983) (order in Docket No. ER83-418-000). The partial requirements rates proposed for KEPCo are the same as the rates proposed for full requirements service to KEPCo members in Docket No. ER83-418-000 and the rates proposed for partial requirements service to the Cooperatives in Docket Nos. ER84-79-000, ER84-80-000, and ER84-81-000, except that KEPCo's rates are revised to reflect the company's December 5, 1983 compliance filing in Docket No. ER83-418-000. The proposed transmission rates, terms, and conditions applicable to KEPCo are identical to those proposed for wheeling service to the Cooperatives in Docket Nos. ER84-79-000, ER84-80-000, and ER84-81-000, except that KEPCo's wheeling service would be subject to a six-month term and to the limitation that only 10 MW of SWPA power will be wheeled.

[3] While KPL characterizes this filing as an initial rate schedule, we need not address this question since the company requests that the proposed rates take effect subject to refund. We note, however, that we have already found, in the case of other KPL customers, that the conversion from full requirements to partial requirements and wheeling service constitutes a change in rates, rather than an initial rate filing. *See* 25 FERC ¶61,465.

[4] KEPCo also challenges KPL's proposed method for scheduling and dispatching KEPCo's SWPA power, the limitation of KPL's wheeling commitment to only the 10 MW of SWPA power, the requirement that KEPCo designate the delivery points to which SWPA peaking power and energy are to be credited, and KPL's right under the Transmission Service Tariff to make unilateral changes in the filed schedule.

transmission arrangement tariff and reinstatement of full requirements service would require appropriate filings and Commission review under Part 35 of the Commission's regulations.[6]

Our preliminary review of the instant filing and the pleadings indicates that KPL's submittal has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept KPL's submittal for filing and suspend its operation as ordered below.

In *West Texas Utilities Company*, Docket No. ER82-23-000, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not yield substantially excessive revenues, as defined in *West Texas*, we would generally impose a nominal suspension. As noted above, the rates proposed in this filing are the same as those proposed in Docket Nos. ER83-418-000, *et al.* We found, in those dockets, that KPL's proposed rates may not produce substantially excessive revenues. Thus, we find that a nominal suspension in this docket is appropriate as well. Furthermore, in view of the fact that both KEPCo and KPL request vaiver of notice and in order to have the rates in place at such time as SWPA power became available to KEPCo, we find that good cause exists to waive the notice requirements. Therefore, we shall suspend the proposed rates, to become effective on January 1, 1984, subject to refund. Furthermore, given the commonality of issues presented in Docket Nos. ER84-188-000 and ER83-418-000, *et al.*, we shall consolidate these dockets for purposes of hearing and decision.

The Commission orders:

(A) The provision of KPL's filing purporting to render the filing void if the Commission orders modification is hereby summarily rejected.

(B) KEPCo's requests for summary disposition are hereby denied, except as ordered in paragraph (A) above.

(C) KPL's request for waiver of the notice requirements is hereby granted.

(D) KPL's submittal is hereby accepted for filing and suspended, to become effective, subject to refund, on January 1, 1984.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of KPL's submittal.

(F) Docket No. ER84-188-000 is hereby consolidated with Docket Nos. ER83-418-000, *et al.*, for purposes of hearing and decision.

(G) The administrative law judge designated to preside in Docket Nos. ER83-418-000, *et al.*, shall determine the procedures best suited for resolution of the consolidated proceeding.

(H) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A

The Kansas Power and Light Company Rate Schedule Designations Docket No. ER84-188-000

Filing Date: January 3, 1984.

Effective Date: January 1, 1984.

Other Party: Kansas Electric Power Cooperative, Inc.

Designation	Description
(1) Rate schedule FERC No. 221.	Letter of December 28, 1983, and Interim Power Supply and Transmission Service Agreement.
(2) Supplement No. 1 to rate schedule FERC No. 221.	Schedule RCW—8/83.
(3) Supplement No. 2 to rate schedule FERC No. 221.	Schedule SWPA/KEPCO—1/84.
(4) Supplement No. 3 to rate schedule FERC No. 221.	Exhibit I (Delivery voltage and capacities).

The Cooperatives are:

Ark Valley Electric Cooperative Association, Inc.
Brown-Atchison Cooperative Association, Inc.
Butler Rural Electric Cooperative Association, Inc.
C. & W. Rural Electric Cooperative Association, Inc.
Coffey County Rural Electric Cooperative Association, Inc.
D. S. & O. Rural Electric Cooperative Association, Inc.
Flint Hills Rural Electric Cooperative Association, Inc.
Leavenworth-Jefferson Electric Cooperative Association, Inc.
Lyon County Electric Cooperative Association, Inc.
Ninnescah Rural Electric Cooperative Association, Inc.
P. R. & W. Electric Cooperative Association, Inc.
Smoky Hill Electric Cooperative Association, Inc.
Smoky Valley Electric Cooperative Association, Inc.
Twin Valley Electric Cooperative Association, Inc.

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BILLING CODE 6717-01-M

[6] Although we have, in extraordinary circumstances, permitted pregranted abandonment of service, we made it clear that in general such advance approval of termination woud not be permitted. Opinion No. 203, 25 FERC ¶ 61,498. We find no extraordinary circumstances here.

[Docket No. G-5716-014, et al.]

Northern Natural Gas Producing Co., et al.; Applications for Certificates, Abandonments of Services and Petitions To Amend Certificates [1]

February 24, 1984.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 13, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
G-5716-014, D, Feb. 13, 1984	Northern Natural Gas Producing Co., 9 Greenway Plaza, Suite 2700, Houston, Tex. 77046.	Northern Natural Gas Co., Hugoton Field, Finney and Grant Counties, Kansas.	(1)	
G-7143-000, D, Jan. 20, 1984	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77252	Andrews Exploration, Inc., Hoyser Field, Calhoun County, Tex.	(2)	
G-15700-004, D, Feb. 15, 1984	Shell Offshore Inc., P.O. Box 4480, Houston, Tex. 77210.	Tennessee Gas Pipeline Co., Eugene Island Block 18 Field, offshore Louisiana.	(3)	
CI83-249-002, C, Feb. 10, 1984	Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001.	Louisiana Industrial Gas Supply Corp. (formerly Cajun Natural Gas Co.), Eugene Island 215, offshore Louisiana; South Marsh Island Block 160, offshore Louisiana; South Marsh Island Block 203, offshore Louisiana; Vermilion 122 and East Cameron 129, offshore Louisiana; High Island Block A-410, offshore Louisiana; West Cameron Block 633, offshore Louisiana.	(4)	14.73
CI84-196-000, A, Feb. 6, 1984	Tenneco Oil Co., Houston Oil & Minerals Corp., TINCO, Ltd., Tenneco Exploration Ltd., and Tenneco Exploration II, Ltd., P.O. Box 2511, Houston, Tex. 77001.	Bayou Interstate Pipeline Corp., Eugene Island 215 D, offshore Louisiana; South Marsh Island 116 A, offshore Louisiana; Vermilion Block 50, offshore Louisiana; High Island A-270-B, offshore Texas; West Cameron 633 B, offshore Louisiana.	(5)	14.73
CI84-197-000, A, Feb. 6, 1984	do	New Jersey Zinc Co., Inc. Bayou Interstate Pipeline Corp., Eugene Island 215 D, offshore Louisiana; South Marsh Island 116 A, offshore Louisiana; Vermilion Block 50, offshore Louisiana; High Island A-270-B, offshore Texas; West Cameron 633 B, offshore Louisiana.	(6)	14.73
CI84-198-000, A, Feb. 7, 1984	do	Entex Inc., Bayou Interstate Pipeline Corp., Eugene Island 215 D, offshore Louisiana; South Marsh Island 116 A, offshore Louisiana; Vermilion Block 50, offshore Louisiana; High Island A-270-B, offshore Texas; West Cameron 633 B, offshore Louisiana.	(6)	14.73
CI84-199-000 (G-4948), B, Feb. 6, 1984.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Tex. 75221-2880.	United Gas Pipe Line Co., Brandt Field, Galveston County, Tex.	(7)	
CI84-205-000 (CI79-504-000 B, Feb. 13, 1984.	TXP Operating Co., 2800 Post Oak Blvd., P.O. Box 1396, Houston, Tex. 77251.	Transcontinental Gas Pipe Line Corp., Galveston Block A-157, offshore Texas.	(8)	
CI84-206-000 (CI64-352), B, Feb. 13, 1984.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Tex. 75221-2880.	Texas Eastern Transmission Corp., Shepherd Field, Hidalgo County, Texas.	(9)	
CI84-207-000 (CI71-53), B, Feb. 13, 1984.	Diamond Shamrock Exploration Co., P.O. Box 631, Amarillo, Tex. 79173.	Northern Natural Gas Co., Division of InterNorth, Inc., Ellis County, Okla.	(10)	
CI84-208-000, (CI64-1301), B, Feb. 13, 1984.	Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001.	Mississippi River Transmission Corp., Woodlawn Field, Harrison et al., Counties, Tex.	(11)	
CI84-209-000, B, Feb. 10, 1984	Norse Petroleum (U.S.) Inc.	Transcontinental Gas Pipe Line Corp., Block A-159, Galveston Area, offshore Texas.	(12)	
CI84-212-000, A, Feb. 14, 1984	TXP Operating Co., P.O. Box 1396, Houston, Tex. 77251.	Texas Eastern Transmission Corp., Vermilion Block 146, offshore Louisiana.	(13)	14.73
CI84-213-000, F, Feb. 15, 1984	Tenneco Oil Co. (successor in interest to Amerex, Inc.), P.O. Box 2511, Houston, Tex.	Michigan Wisconsin Pipe Line Co., Northwest Cedardale Field, Woodward County, Okla.	(14)	
CI84-215-000, E, Feb. 16, 1984	Cryogen Inc., 860 San Jacinto Bldg., Houston, Tex. 77002.	Transcontinental Pipeline Co., Live Oak Field, Vermilion Parish, La.	(15)	
G-15472-001, E, Jan. 16, 1984	Phillips Oil Co. (successor in interest to Phillips Petroleum Co.); 338 HS&L Bldg., Bartlesville, Okla. 74004.	Trunline Gas Co., Northeast Hitchcock Field, Galveston County, Tex.	(16)	

[1] To release gas for irrigation fuel.
[2] Gulf conveyed to Andrews a part of Gulf's interest in a lease which is located in the Hoyser Field, Victoria County, Tex.
[3] Leases were released on May 23, 1983.
[4] Applicant is filing to add additional acreage.
[5] Applicant is filing under Gas Purchase and Sales Agreement dated Feb. 2, 1984.
[6] Applicant is filing under Gas Purchase and Sales Agreement dated Jan. 20, 1984.
[7] Partial Assignment and Bill of Sale executed on Sept. 29, 1983, effective Oct. 1, 1983, wherein Sun Exploration & Production Co. assigned its interest in Lease No. 907534, W. F. Albrecht, et ux., 303.35 acres, more or less, to T. A. Manhart.
[8] Dedicated recoverable reserves under Galveston Island Block A-157 depleted; no further production planned; last sales and deliveries—May 24, 1983.
[9] Assignment and Bill of Sale executed on Sept. 29, 1983, effective Oct. 1, 1983, wherein Sun Exploration & Production Co. assigned its interest in F. B. Godinez Gas Unit No. 1, covering 320 acres, more or less.
[10] Wells plugged; oil and gas leases have expired.
[11] Termination of gas deliveries from Connor-Key Gas Unit No. 1 to Mississippi River Transmission Corp.
[12] Depletion.
[13] Applicant is filing under Gas Purchase Contract dated July 19, 1983.
[14] Tenneco Oil Co. is acquiring this property by Assignment and Bill of Sale dated Oct. 15, 1980, between Tenneco Oil Co., and Amerex Inc. Such assignment became effective on Aug. 1, 1980.
[15] The January 19, 1984, amendment to the Contract acknowledges that CRYOGEN acquired the interests of the heirs and surviving wife of George R. Brown, an individual who died Jan 22, 1983, in the Live Oak Field, Vermilion Parish, La.
[16] Effective Sept. 1, 1983, Phillips Petroleum Co. assigned to Phillips Oil Co. its interest in the Huff-A Unit located in Galveston County, Tex.
Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 84-5499 Filed 2-29-84; 8:45 am]
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[Docket Nos. ER82-553-001 and ER82-554-000]

Ohio Power Co.; Refund Report

February 24, 1984.

Take notice that on October 31, 1983, Ohio Power Company (Ohio) submitted for filing its Refund Report in the above referenced dockets pursuant to Commission Orders issued on May 18, 1983 and July 8, 1983.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before March 8, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5500 Filed 2-29-84; 8:45 am]
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[Docket No. G-4325-000, et al.]

Shell Western E&P Inc. (Successor In Interest To Shell Oil Co.), et al.; Application of Succession in Interest From Shell Oil Company to Shell Western E&P Inc.

February 24, 1984.

Take notice that on January 6, 1984, Shell Western E&P Inc. (Shell), of P.O. Box 4684, Houston, Texas 77210, as successor in interest to Shell Oil Company (Shell Oil), filed an application to amend certain certificates currently held by Shell Oil to show Shell as certificate holder and to redesignate the related rate schedules listed in the attached Appendix.

Effective as of January 1, 1984, Shell Oil Company (Shell Oil) assigned its interest in certain properties to Shell Western E&P Inc. (Shell). As a result of such assignments, Shell has acquired all of the interests of Shell Oil in all of the properties which are subject to the Shell Oil FERC Gas Rate Schedules listed in the attached appendix.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 9, 1984 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in according with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

APPENDIX

Shell Oil Company gas rate schedule No.	Certificate Docket No(s).	Field or plant name	County or Parish	State	Contract Date	Purchaser
10	G-5004	Provident City*	Colorado, Lavaca	TX	10-27-70	Texas Eastern Transmission Corp.
13	G-4325	Sheridan	Colorado	TX	1-1-84	National Fuel Gas Supply Corp.
16	G-5009	Monahans	Ward, Winkler	TX	11-15-79	El Paso Natural Gas Co.
17	G-5010	Monahans	Ward, Winkler	TX	11-15-79	Do.
18	G-5011	Ratliff-Bendford	Andrews	TX	11-15-79	Do.
19	G-5012	TXL (P)	Ector	TX	11-15-79	Do.
20	G-5013	Wasson (P)	Gaines, Yoakum	TX	11-15-79	Do.
21	G-5014	West Panhandle	Hutchinson, Moore	TX	8-30-51	Panhandle Eastern Pipe Line Co.
22	G-5015	Hugoton	Sherman	TX	3-20-51	Phillips Petroleum Co.
23	G-5016	Hugoton	Sherman	TX	9-19-47	Do.
32	G-5111	Langlie-Mattix	Lea	NM	5-1-49	El Paso Natural Gas Co.
40	G-5024	Tubb-Blinebry	Lea	NM	11-15-79	Do.
41	G-5025, G-5659, G-10595, G-12147.	Tubb-Blinebry	Lea	NM	11-15-79	Do.
57	G-5044	Vixen	Caldwell	LA	9-10-46	Mid-Louisiana Gas Co.
69	G-5057	Hugoton	Grant, Haskell	KS	11-18-49	Northwest Central Pipeline Corp.
77	G-5065	Hugoton	Grant	KS	5-2-49	Mobil Oil Corp.
78	G-5066	Hugoton	Haskell	KS	10-1-50	Northern Natural Gas Corp.
79	G-5067	Hugoton	Haskell	KS	10-31-49	Do.
80	G-5068	Hugoton	Haskell	KS	5-15-53	Do.
81	G-5069	Hugoton	Haskell	KS	11-1-50	Do.
82	G-5070	Hugoton	Haskell	KS	8-1-48	Do.
83	G-5071	Hugoton	Haskell	KS	9-9-49	Do.
85	G-5073	Keyes Dome	Cimarron, Texas	OK	11-27-53	Colorado Instate Gas Co.
99	G-5087	Scholem Alechem	Carter	OK	1-1-53	Lone Star Gas Co.
122	G-5110, G-5025	Langie-Mattix	Lea	NM	9-27-39	El Paso Natural Gas Co.
126	G-8133	Happytown	St. Martin	LA	9-1-54	Gas Gathering Corp.
134	G-10321	S. Andrews*	Andrews	TX	11-15-79	El Paso Natural Gas Co.
137	G-10479	La Copita	Starr	TX	Expired	Tennessee Gas Pipeline Co.
142	G-10710	Spraberry	Reagan	TX	12-14-79	El Paso Natural Gas Co.
151	G-11852	Prentice (P)	Terry, Yoakum	TX	5-18-77	Northern Natural Gas Co.
157	G-12336	Riverside	Beaver	OK	5-27-77	Colorado Interstate Gas Co.
159	G-12832	Hugoton	Grant	KS	5-26-77	Northern Natural Gas Co.
163	G-13295	Buffalo	Harper	OK	5-23-77	Do.
164	G-13363, G-14979	Rosston	Beaver	OK	5-26-77	Do.
166	G-13703	SW Camp Creek	Beaver	OK	2-13-57	Colorado Interstate Gas Co.
167	G-13704	SW Camp Creek	Beaver	OK	5-26-77	Northern Natural Gas Co.
168	G-14348	Emperor	Winkler	TX	11-1-82	West Texas Gathering Co.
170	G-15501	Farnsworth	Ochiltree	TX	1-20-78	Northern Natural Gas Co.
173	G-15366	West Lake Trammel	Nolan	TX	1-1-82	West Lake Natural Gasoline Co.
178	G-13876	Aneth	San Juan	UT	11-4-57	El Paso Natural Gas Co.
181	G-13308	Mocane-Laverne	Harper	OK	11-10-78	Michigan Wisconsin Pipe Line Co.
183	G-16766	Javelina*	Hidalgo, Starr	TX	8-15-58	Natural Gas Pipeline Co. of America
184	G-15987	Bisti	San Juan	NM	6-16-58	El Paso Natural Gas Co.
188	G-5008	Seeligson	Jim Wells	TX	1-1-78	Tennessee Gas Pipeline Co.
189	G-17647	Big Foot	Atascosa, Frio	TX	9-29-80	Transcontinental Gas Pipe Line Corp.
194	G-10211	Monte Christo	Hidalgo	TX	7-22-77	Florida Gas Transmission Co.
197	G-18016	SW Enville	Love	OK	11-1-79	Cimarron Transmission
199	G-18038	Big Mineral	Grayson	TX	1-9-59	Lone Star Gas Co.
205	G-5043	Turtle Bayou	Terrebonne	LA	5-1-79	United Gas Pipe Line Co.
206	G-5045	Weeks Island	Iberia, St. Mary	LA	5-1-79	Do.
213	G-19215	Belle River	St. Martin	LA	1-4-80	Do.
216	G-19569	Lake Washington	Plaquemines	LA	11-1-79	Tennessee Gas Pipeline Co.
221	G-19788	Crossett	Crane, Crockett, Upton	TX	3-31-79	Northern Natural Gas Co.
224	G-20224	Hugoton	Texas	OK	8-10-82	Natural Gas Pipeline Co. of America
229	CI160-14	White Castle	Iberville	LA	11-23-59	Florida Gas Transmission Co.
230	G-17888	Clear Lake*	Beaver	OK	5-19-58	El Paso Natural Gas Co.
236	CI160-502	Wilburton	Morton	KS	2-4-60	Northern Natural Gas Co.
238	CI161-151	Manziel	Wood	TX	12-11-80	Arkansas Louisiana Gas Co.
240	CI161-613	Hugoton	Grant, Kearny, Stevens	KS	5-13-59	Northern Natural Gas Co.
241	G-5062, G-5063, G-5064, G10320.	Hugoton	Grant, Haskell, Seward	KS	9-16-60	Colorado Interstate Gas Co.

APPENDIX—Continued

Shell Oil Company gas rate schedule No.	Certificate Docket No(s).	Field or plant name	County or Parish	State	Contract Date	Purchaser
242	CI161-737	Catesby *	Beaver, Cimarron, Ellis	OK	2-17-61	Transwestern Pipeline Co.
243	CI161-737	Flowers *	Lipscomb, Roberts	TX	4-6-61	Do.
247	CI161-1394	Buffalo	Harper	OK	7-24-60	Do.
249	CI161-1430	Brown-Bassett	Terrell	TX	6-1-61	El Paso Natural Gas Co.
250	G-5058	Hugoton	Grant	KS	2-2-59	Panhandle Eastern Pipe Line Co.
252	G-5076	Panhandle	Moore	TX	6-6-61	Do.
256	G-5059, G-5060, G-5061, G-6090.	Hugoton	Hamilton, Haskell, Kearny, Seward, Stanton.	KS	6-7-61	Northwest Central Pipeline Corp.
257	CI162-255	Sligo	Bossier	LA	7-1-61	Texas Eastern Transmission Corp.
261	CI162-547	Bryans Mill	Cass	TX	10-16-61	Natural Gas Pipeline Co. of America
264	CI162-653	SW Helen Gohlke	Victoria	TX	8-1-62	Florida Gas Transmission Co.
267	CI16)-660	Elk City	Beckham, Washita	OK	2-11-63	Panhandle Eastern Pipe Line Co.
268	CI161-524	Mocane-Laverne	Dewey, Major, Woods, Woodward.	OK	8-9-62	Michigan Wisconsin Pipe Line Co.
273	CI162-1512	Yucca Butte	Pecos	TX	1-24-63	El Paso Natural Gas Co.
274	CI162-1536	Mocane-Laverne	Beaver	OK	8-10-62	Colorado Interstate Gas Co.
275	CI162-1534	Mocane-Laverne	Beaver, Ellis	OK	2-20-63	El Paso Natural Gas Co.
276	CI163-111	Fergan	Beaver	OK	11-22-62	Panhandle Eastern Pipe Line Co.
277	CI163-181	Ringwood	Major	OK	12-21-63	Oklahoma Natural Gas Gathering Co.
278	CI163-267	Mocane-Laverne	Harper	OK	4-9-57	Colorado Interstate Gas Co.
279	CI163-272	Mocane-Laverne	Harper	OK	5-10-62	Do.
281	CI163-457	Cheniere Creek	Ouachita	LA	7-23-62	Arkansas Louisiana Gas Co.
282	CI163-479	Hobart Ranch	Hemphill	TX	8-21-62	Northwest Central Pipeline Corp.
283	CI163-1041	Tippett*	Crockett, Pecos	TX	6-28-63	Northern Natural Gas Co.
286	CI164-594	Follett	Beaver	OK	8-22-63	Do.
			Lipscomb	TX		
287	CI163-1532	Iuka-Carmi	Pratt	KS	2-18-63	Panhandle Eastern Pipe Line Co.
289	CI163-1583	North Carter	Beckham	OK	Expired	Arkansas Louisiana Gas Co.
291	CI164-69	Averd*	Dewey, Woods	OK	10-4-62	Panhandle Eastern Pipe Line Co.
293	CI164-592	Baldwin	Beaver	OK	8-20-63	Northern Natural Gas Co.
297	CI163-1509	McAllen Ranch	Hidalgo	TX	5-3-63	Valero Interstate Transmission Co.
298	CI164-655	Schmidt	Hidalgo	TX	10-1-63	Do.
299	CI164-1170	Thomas	Dewey	OK	12-10-63	Natural Gas Pipeline Co. of America
301	CI164-703	Willamar	Wilbarger	TX	7-15-63	Do.
303	CI164-1213	NW Chester	Woodward	OK	1-7-64	Do.
304	CI164-1469	Langlie-Mattix	Lea	NM	5-1-40	El Paso Natural Gas Co.
305	CI164-1483	South Andrews	Andrews	TX	11-15-78	Do.
310	CI165-473	South Taloga	Dewey	OK	9-2-64	Natural Gas Pipeline Co. of America
312	CI165-517	Black Bayou*	Cameron	LA	10-1-64	Valley Gas Co.
314	CI165-739	Kings Bayou	Cameron	LA	12-22-64	Michigan Wisconsin Pipe Line Co.
315	CI165-399	NW Ozona (P)	Crockett	TX	8-1-64	El Paso Natural Gas Co.
317	CI165-1003	NW Oakdale	Woods	OK	12-28-64	Panhandle Eastern Pipe Line Co.
318	CI165-1164	Indian Basin	Eddy	NM	2-25-65	Natural Gas Pipeline Company of America
319	CI165-1346	Brown-Bassett	Crockett	TX	6-1-65	El Paso Natural Gas Co.
322	CI166-237	Carrick	Beaver	OK	4-1-65	Natural Gas Pipeline Co. of America
327	CI166-729	West Waha	Reeves	TX	2-3-65	El Paso Natural Gas Co.
328	CI66-764	South Taloga	Dewey, Ellis	OK	5-18-65	Natural Gas Pipeline Co. of America
332	CI66-888	South Feldman*	Ellis,	OK	1-20-65	Panhandle Eastern Pipe Line Co.
			Roger Mills,			
			Hemphill	TX		
334	CI66-897	Jm Ranch*	Crockett, Terrell, Val Verde	TX	2-24-64	El Paso Natural Gas Co.
335	CI66-1264	NE Gage*	Ellis, Woodward	OK	4-15-65	Panhandle Eastern Pipe Line Co.
336	CI66-1283	South Bishop	Ellis	OK	3-22-65	Northwest Central Pipeline Corp.
337	CI66-1278	Ellwood*	Ellis	OK	4-12-65	Northern Natural Gas Co.
340	CI67-13	South Bishop	Roger Mills	OK	5-18-65	Northwest Central Pipeline Corp.
341	CI67-73	Blinebry	Lea	NM	11-15-78	El Paso Natural Gas Co.
343	CI66-887	Gomez	Pecos	TX	2-24-65	Do.
344	CI67-1501	Halley	Winkler	TX	2-2-67	Transwestern Pipeline Co.
346	CI67-1084	Toro	Reeves	TX	10-27-66	El Paso Natural Gas Co.
347	CI67-1095	Hamon	Reeves	TX	10-28-66	Do.
348	G-5090, G-5092	West Panhandle	Hutchinson, Moore	TX	6-1-67	Phillips Petroleum Co.
351	CI67-1096	Lockridge	Ward	TX	10-28-66	El Paso Natural Gas Co.
353	CI68-811	Dover-Hennessey (P)	Blaine, Garfield, Kingfisher, Logan.	OK	11-17-67	Panhandle Eastern Pipe Line Co.
354	CI68-1010	Tangier	Woodward	OK	3-8-69	Northern Natural Gas Co.
355	CI68-1026	Buckhorn	Crockett	TX	1-30-69	Do.
356	CI68-923	NE Oates	Pecos	TX	12-21-67	Do.
360	CI68-1271	South Bishop	Roger Mills	OK	3-12-69	Panhandle Eastern Pipe Line Co.
363	CI69-257	West Panhandle	Hutchinson	TX	8-1-78	Phillips Petroleum Co.
367	CI69-945	NW Chester	Woodward	OK	8-25-69	Michigan Wisconsin Pipe Line Co.
375	CI70-7	Barstow	Ward	TX	5-2-69	Transwestern Pipeline Co.
380	CI70-928	Buffalo Wallow	Hemphill	TX	4-1-70	Panhandle Eastern Pipe Line Co.
382	CI71-516	Kings Bayou	Cameron	LA	7-22-70	Tennessee Gas Pipeline Co.
383	CI71-772	Toro	Reeves	TX	3-24-71	El Paso Natural Gas Co.
385	CI72-177	Van	Van Zandt	TX	8-9-71	United Gas Pipe Line Co.
390	CI72-438	East Texas	Gregg	TX	12-27-71	Do.
391	CI72-696	East Texas	Gregg, Upshur	TX	12-23-71	Do.
395	CI73-756	Bisti	San Juan	NM	4-11-73	El Paso Natural Gas Co.
400	G-4998, G-4999, G-13255, CI69-1143.	Helen Gohlke	DeWitt, Victoria	TX	1-1-74	Texas Eastern Transmission Corp.
405	CI75-407	Rocky Arroyo	Eddy	NM	9-6-74	El Paso Natural Gas Co.
412	CI76-657	Saber	Beckham	OK	4-19-76	Do.
413	CI76-675	Elk City	Beckham	OK	3-1-62	Do.
417	CI77-282	Bisti	San Juan	NM	1-19-77	Do.
418	CI77-563	Antelope Ridge	Lea	NM	Expired	Western Gas Interstate Co.
419	CI77-603	Lusk	Lea	NM	Expired	El Paso Natural Gas Co.
420	CI77-649	Cemetery	Eddy	NM	5-10-77	Natural Gas Pipeline Co. of America
423	CI78-811	Coral Creek	Fallon	MT	8-22-78	Montana-Dakota Utilities Co.

APPENDIX—Continued

Shell Oil Company gas rate schedule No.	Certificate Docket No(s).	Field or plant name	County or Parish	State	Contract Date	Purchaser
424	CI78-131	Pennel	Fallon	MT	8-22-79	Do.
425	CI78-192	Pine*	Dawson, Fallon Prairie, Wibaux	MT	4-28-80	Do.
430	CI78-549	Elk City	Beckham	OK	12-1-83	El Paso Natural Gas Co.
431	CI76-556	San Ramon	Hidalgo	TX	1-1-81	Tennessee Gas Pipeline Co.
432	CI78-536	Stateline (P)	Richland, McKenzie	MT ND	2-1-78	Montana-Dakota Utilities Co.
450	G-5038, C169-646	Iowa	Calcasieu, Jefferson, Davis	LA	5-1-79	United Gas Pipe Line Co.
459	CI80-456	Aneth	San Juan	UT	9-2-57	El Paso Natural Gas Co.
463	CI81-200-000	Monte Christo	Hidalgo	TX	1-1-81	Valero Interstate Transmission Co.
466	CI83-134-000	Little Beaver	Fallon, Bowman	MT ND	11-1-82	Montana-Dakota Utilities Co.

*Indicates additional fields are covered.
(P) Indicates plant residue gas sale with no specific acreage under contract.

[FR Doc. 84-5501 Filed 2-29-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF84-174-000]

Allegheny Hydropower, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

February 24, 1984.

On February 8, 1984, Allegheny Hydropower, Inc. (Applicant) of 105 South 112th Street, 3rd Floor, Philadelphia, Pennsylvania 19167, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The hydroelectric facility (P-7914) will be located at the Allegheny River Lock and Dam No. 7, 45.7 miles from the mouth of the river at Pittsburgh, Pennsylvania. The facility will utilize the natural flows of the Allegheny River and head created by the existing dam. The U.S. Army Corps of Engineers maintains and operates the lock and dam primarily for navigation. The electric power production capacity of the facility will be 15 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-5493 Filed 2-29-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF84-178-000]

City of Westernport, Maryland—Bloomington Lake Hydroelectric Project; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

February 24, 1984.

On February 13, 1984, City of Westernport, Maryland (Applicant) of P.O. Box 266, Allegany County, Westernport, Maryland 21562, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Bloomington Lake Hydroelectric Project (P-4506) will be located at the Bloomington Dam on the North Branch of the Potamic River on the State line between Garrett County, Maryland, and Mineral County, West Virginia. The facility will be operated in the run-of-river mode utilizing those flows released by the U.S. Army Corps of Engineers through operation of the Bloomington Reservoir. The electric power production capacity of the facility will be 19 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-5495 Filed 2-29-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF84-179-000]

Small Power Producers; Fischbach Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

February 24, 1984.

On February 14, 1984, Fischbach Corporation (Applicant) of 485 Lexington Avenue, New York, New York 10017, submitted for filing an application

for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Spaulding Fibre Company, Inc., 310 Wheeler, Tonawanda, New York 14150. The facility will consist of a combustion turbine-generator with a waste heat recovery boiler. The useful thermal energy output, which is in the form of steam, will be sold to Spaulding Fibre Company, Inc. The primary energy source for the facility will be natural gas. The electric power production capacity of the facility will be 22 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5497 Filed 2-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-168-000]

Small Power Producers; Time Energy Systems, Inc.—York Hospital; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

February 24, 1984.

On February 6, 1984, Time Energy Systems, Inc., (Applicant) of 2900 Wilcrest Drive, Houston, Texas 77042, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the York Hospital in York, Pennsylvania. The facility will consist of two spark ignition engine generator units with waste heat recovery equipment. The useful thermal energy output, which will be available in the form of steam and hot water, will be used for building heat and domestic hot water production. The primary energy source for the facility will be natural gas supplemented by diesel fuel. The electric power production capacity of the facility will be 2500 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5502 Filed 2-29-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59135C; TSH-FRL 2534-7]

Certain Chemicals; Modification of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's modification of TM-83-81, a test marketing exemption (TME) which was granted October 7, 1983 under section 5(h)(6) of the Toxic Substances Control Act (TSCA), and published in the Federal Register October 20, 1983 (48 FR 48710). The modified test marketing conditions are described below.

EFFECTIVE DATE: February 24, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Jones, Premanufacture Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-203, 401 M St. SW., Washington, D.C. 20460, (202-382-3734).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and to permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities, and may modify or revoke the test marketing exemption upon receipt of new information which casts significant doubt on its finding that the activities authorized in the TME will not present any unreasonable risks.

EPA initially determined that test marketing of the new chemical substance described below, under the conditions set out in the test marketing exemption application (TMEA) and for a time period not to exceed one year, would not present any unreasonable risk or injury to health or the environment. Based upon this determination, EPA approved the TMEA on condition that the production volume, the number of workers exposed to the new chemical, and the levels and duration of exposure not exceed that specified in the application. All other conditions described in the application were required to be met. The following additional restrictions were specified:

1. If the substance is shipped, the applicant must maintain records of the date(s) of shipment(s) to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

2. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME.

On January 23, 1984, review of PMNs P-83-1005 and P-83-1062 for two new chemical substances identified generically as a triethanolamine salt of tricarboxylic acid, and tricarboxylic acid, respectively, culminated in EPA proposing a rule under section 6(a) of TSCA, effective immediately under section 5(f)(2), regulating those substances when they are or could be used as, or to produce, a metalworking fluid additive. The proposed rule, published at 49 FR 2762, was promulgated to protect against carcinogenic risks which would result if nitrites or other nitrosating agents were added to the P-83-1005 substance when used as a metalworking fluid additive.

As a result of the new information compiled in the review of P-83-1005 and P-83-1062, EPA became aware that, if the TM-83-81 substance were used as a

corrosion inhibitor in metalworking fluids, it would present similar risks to human health. This cast significant doubt on EPA's finding that the activities specified in TM-83-81 would not present any unreasonable risk of injury to health or the environment. EPA informed the TME applicant of these concerns, and the applicant agreed to modify its TMEA to incorporate the controls specified in the proposed rule, promulgated under sections 5(f) and 6(a) of TSCA, for P-83-1005 and P-83-1062. EPA therefore modifies TM-83-81 to incorporate by reference the substantive requirements of 40 CFR § 747.200(b), (c), (d) (1) and (2), and (f), subject to the following: (1) The term "amine salt" is substituted for "triethanolamine salt of tricarboxylic acid"; (2) the term "T-83-81" is substituted for "P-83-1005"; (3) the term "and test marketing" is added to subsection (b)(1) after "small quantities solely for research and development"; (4) the letter specified in subsection (d)(1)(i) shall read: "The substance identified generically as an amine salt, contained in the product (insert distributor's trade name or other identifier for product containing the T-83-81 new chemical substance) is regulated under the terms of a Test Marketing Exemption (TME) granted by the Environmental Protection Agency under section 5(h)(1) of the Toxic Substances Control Act. The TME prohibits the addition of any nitrosating agent, including nitrites, to the amine salt when the substance is or could be used in metalworking fluids. The substance leads to the formation of a substance known to cause cancer in laboratory animals. The amine salt has been specifically designed to be used without nitrites. Consult the enclosed information sheet for further information."; (5) the term "the information sheet" is substituted for "this rule" in subsection (d)(1)(ii); and (6) the information sheet specified in subsections (d) (1)(i) and (ii) shall consist of 40 CFR 747.200 (b), (c), (d) (1) and 2, and (f) as modifed by the above.

TME 83-81

Date of Receipt: August 29, 1983.

Notice of Receipt: September 9, 1983 (48 FR 40781).

Date of Grant: October 7, 1983 (48 FR 48710).

Applicant: Confidential.

Chemical: Amine salt of a substituted organic acid (generic).

Use: Corrosion inhibitor (generic).

Production Volume: 4000 kg.

Number of Customers: 1.

Worker Exposure: Confidential.

Test Marketing Period: 1 year.

Commencing on: February 24, 1984.

Risk Assessment: Based on test data, the test market substance is a moderate eye and skin irritant. Workers are expected to wear appropriate protective equipment, including rubber gloves, aprons and safety glasses. If the chemical is used in metalworking fluids which contain, or to which are added, nitrites or other nitrosating agents, nitrosamines will be formed which present carcinogenic risks for processors and users. Releases to the environment are expected to be insignificant.

Public Comments: None.

The Agency reserves the right to further modify, or rescind approval of, this exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk to health or the environment.

Dated: February 24, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84-5593 Filed 2-29-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51508; TSH-FRL 2534-8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

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

DATES: Close of Review Period:

PMN 84-418, 84-419, and 84-420—May 16, 1984.

PMN 84-421—May 20, 1984.

PMN 84-422, 84-423, 84-424, 84-425, 84-426, 84-427, 84-428, 84-429, 84-430, 84-431, 84-432, 84-433, 84-435, 84-436, and 84-437—May 21, 1984.

PMN 84-438, 84-439, and 84-440.

Written comments by:

PMN 84-418, 84-419, and 84-420—April 16, 1984.

PMN 84-421—April 20, 1984.

PMN 84-422, 84-423, 84-424, 84-425, 84-426, 84-427, 84-428, 84-429, 84-430, 84-431, 84-432, 84-433, 84-435, 84-436, and 84-437—April 21, 1984.

PMN 84-438, 84-439, and 84-440—April 22, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-51508]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St. SW., Washington, D.C. 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Margaret Stasikowski, Acting Chief, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St. SW., Washington, D.C. 20460, (202-382-3729).

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

PMN 84-418

Manufacturer. Muskegon Chemical Company.

Chemical. (G) Methyl ester of dicarboxylic acid.

Use/Production. (G) Open, non-dispersive use. Prod. range: 1,000-5,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 6 hrs/da, up to 8 da/yr.

Environmental Release/Disposal. .0001 kg/batch released to air with .5 kg/batch to water and 1 kg/batch to land. Disposal by approved landfill.

PMN 84-419

Importer. Confidential.

Chemical. (G) Triazine derivative.

Use/Import. (S) Sealing aid for anodic coatings on aluminum to prevent formation of sealing smut. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant: Ames Test: Non-mutagenic; LC_{50} (Rainbow trout)—>500 mg/l; Excherichia Coli: Non-mutagenic Toxicity to bacteria:—>100 mg/l; Biological elimination: 25-50%

Exposure. Processing: dermal, a total of 3 workers, up to 8 hrs/shift.

Environmental Release/Disposal. No data submitted.

PMN 84-420

Manufacturer. Fairmunt Chemicals Company, Inc.
Chemical. (S) 4-(4.5-dihydro-4-(5-hydroxy-3-methy-1-(4-sulfophenyl)-1H-pyrazol-4-yl)methylene)-3-methyl-5-oxo-1H-pyrazol-1-yl-benzenesulfonic acid-tripotassium salt.
Use/Production. (S) Industrial antihilation compound in photographic film formulations. Prod. range: 1,000-3,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers, up to 6 hrs/da, up to 3 da/yr.
Environmental Release/Disposal. 2-5% released to water. Disposal by publicly owned treatment works (POTW).

PMN 84-421

Manufacturer. Confidential.
Chemical. (G) Bis(alkyl-carbomononcyle)spiroheterocycle.
Use/Production. (G) Polymer additive, contained use. Prod. range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight; Ames Test: Negative.
Exposure. Manufacture and processing: dermal and inhalation, a total of 18 workers, up to 4 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. Released to air.

PMN 84-422

Manufacturer. Confidential.
Chemical. (G) Blocked isocyanate.
Use/Production. (G) Intermediate for electrical insulation coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84-423

Manufacturer. Confidential.
Chemical. (G) Polyamideimide resin.
Use/Production. (G) Intermediate for electrical insulation coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84-424

Manufacturer. Confidential.
Chemical. (G) polyester resin.
Use/Production. (G) Electrical insulation coating. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84-425

Importer. Confidential.
Chemical. (G) Alkyl arylphosphonium salt.
Use/Production. (G) Contained use. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. None expected.

PMN 84-426

Manufacturer. Confidential.
Chemical. (G) Modified rosin, metal salt.
Use/Production. (G) Pigment dispersing agent. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. 1 kg released to waste water and solid waste. Disposal by in-plant solid waste recovery sludge.

PMN 84-427

Manufacturer. Confidential.
Chemical. (G) Saturated aromatic and aliphatic polyester ployols.
Use/Production. (S) Industrial polyester for regid polyurethane foam for thermal insulation. Prod. range: 75,000-200,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 22 workers, up to 4 hrs/da, up to 75 da/yr.
Environmental Release/Disposal. 1-9 kg/batch released.

PMN 84-428

Manufacturer. Confidential.
Chemical. (G) Saturated aromatic and aliphatic polyester polyols.
Use/Production. (S) Industrial polyester for rigid polyurethane foam for thermal insulation. Prod. range: 75,000-200,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 22 workers, up to 4 hrs/da, up to 75 da/yr.
Environmental Release/Disposal. 1-9 kg/batch released.

PMN 84-429

Manufacturer. Confidential.
Chemical. (G) Saturated aromatic and aliphatic polyester polyols.
Use/Production. (S) Industrial polyester for rigid polyurethane foam for thermal insulation. Prod. range: 75,000-200,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 22 workers, up to 4 hrs/da, up to 75 da/yr.
Environmental Release/Disposal. 1-9 kg/batch released.

PMN 84-430

Manufacturer. Confidential.
Chemical. (G) Saturated aromatic and aliphatic polyester polyols.
Use/Production. (S) Industrial polyester for rigid polyurethane foam for thermal insulation. Prod. range: 75,000-200,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 22 workers, up to 4 hrs/da, up to 75 da/yr.
Environmental Release/Disposal. 1-9 kg/batch released.

PMN 84-431

Manufacturer. Confidential.
Chemical. (G) Saturated aromatic and aliphatic polyester polyols.
Use/Production. (S) Industrial polyester for rigid polyurethane foam for thermal insulation. Prod. range: 75,000-200,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 22 workers, up to 4 hrs/da, up to 75 da/yr.
Environmental Release/Disposal. 1-9 kg/batch released.

PMN 84-432

Manufacturer. Confidential.
Chemical. (G) Saturated aromatic and aliphatic polyester polyols.
Use/Production. (S) Industrial polyester for rigid polyurethane foam for thermal insulation. Prod. range: 75,000-200,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 22 workers, up to 4 hrs/da, up to 75 da/yr.
Environmental Release/Disposal. 1-9 kg/batch released.

PMN 84-433

Manufacturer. Confidential.
Chemical. (G) Saturated aromatic and aliphatic polyester polyols.
Use/Production. (S) Industrial polyester for rigid polyurethane foam for thermal insulation. Prod. range: 75,000-200,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 22 workers, up to 4 hrs/da, up to 75 da/yr.
Environmental Release/Disposal. 1-9 kg/batch released.

PMN 84-435

Importer. Aceto Chemical Company, Inc. and Ward Blenkinsop & Co., Ltd.
Chemical. (G) Formulation of naphthoquinone, diazidesulphonic acid esters and phenol-formaldehyde resins.
Use/Import. (S) Industrial composition suitable for the coating on

positive working lithographic printing plates. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. No data submitted.

PMN 84-436

Environmental Release/Disposal. No data submitted.

Importer. Biddle Sawyer Corporation.

Chemical. (S) Cyano ethyl pullulan.

Use/Import. (G) Binder agent. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

PMN 84-437

Manufacturer. Adhesive Engineering Company.

Chemical. (G) Amine Adduct of epoxy resin.

Use/Production. (S) Commercial curing agent for epoxy adhesives used in underwater application. Prod. range: 1,000-4,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 2 hrs/da, up to 4 da/yr.

Environmental Release/Disposal. 0.1 kg/batch released to water. Disposal by approved off site disposal.

PMN 84-438

Manufacturer. Confidential.

Chemical. (G) Alkyl butanamide.

Use/Production. (G) Stabilizer for textile printing products. Prod. range: 10,000-30,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 12 workers, up to 3 hrs/da, up to 150 da/yr.

Environmental Release/Disposal. 0.1-5 kg released to water. Disposal by POTW and company waste treatment plant.

PMN 84-439

Importer. Confidential.

Chemical. (G) Substituted cyclopropanecarboxylic acid.

Use/Import. (G) Intermediate. Import range: Confidential.

Toxicity Data. Acute oral. > 5,000 mg/kg; Acute dermal: > 1,000 mg/kg; Irritation: Skin—None, Eye—Moderate; Skin sensitization: Not strong.

Exposure. Processing: dermal, a total of 200 manhours/yr.

Environmental Release/Disposal. No data submitted.

PMN 84-440

Manufacturer. Estron Chemical, Inc.

Chemical. (G) Styrene acrylic polymer.

Use/Production. (S) Industrial coatings. Prod. range: 150,000-250,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 2 workers, up to 8 hrs/da, up to 75 da/yr.

Environmental Release/Disposal. 1 kg/day released to air.

Dated: February 24, 1984.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 84-5591 Filed 2-29-84; 8:45 am]

BILLING CODE 6560-50-M

[A-Y-FRL 2535-1]

Modification of PSD Permit for Kentucky Utilities Co., Hancock County, Kentucky

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that on January 17, 1984, the Environmental Protection Agency (EPA) issued a modification to a Prevention of Significant Deterioration (PSD) permit to the Kentucky Utilities Company (KU). The modification to the permit consists of a change in the nitrogen oxides emission limitation for the auxiliary boiler at the Hancock County, Kentucky plant.

DATES: This action is effective as of January 17, 1984, the effective date of the modification to the PSD permit.

ADDRESSES: Copies of the modification to the PSD permit, original PSD permit, permit application, and preliminary and final determinations are available for public inspection upon request at the following locations:

U.S. Environmental Protection Agency, Region IV, Air Management Branch, Air and Waste Management Division, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Division of Air Pollution Control, Kentucky Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 18 Reilly Road, Building, No. 2 Ft. Boone Plaza, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Roger Pfaff of the EPA-Region IV, Air Management Branch at the Atlanta address given above, or telephone (404) 881-7654 (FTS 257-7654).

SUPPLEMENTARY INFORMATION: On January 17, 1984, the Environmental Protection Agency (EPA) issued a modification to a Prevention of Significant Deterioration (PSD) permit, designated PSD-KY-137, to the Kentucky Utilities Company (KU). The permit is for the construction of two, 650 megawatt, coal-fired electric power generating units near Hawesville, Kentucky. The plant also includes a small (less than 100 million Btu per hour heat input) oil fired steam generator to be used only for startup, when both main boilers are off line. Emission limitations for the auxiliary boiler must represent Best Available Control Technology (BACT), which takes into consideration energy, environmental and economic impacts. The modification of the permit consists of a change in the nitrogen oxides emission limitation for the auxiliary boiler from 0.1 pound per million Btu to 0.30 pound per million Btu.

On April 15, 1982, EPA issued KU a PSD permit for the Hawesville plant. On March 10, 1983, KU filed an appeal with the U.S. Court of Appeals, Sixth Circuit, for review of the nitrogen oxides limit for the auxiliary boiler. On May 12, 1983, KU filed a Motion for Leave to Remand to Adduce Additional Evidence. EPA filed a "Stipulation for Remand", that KU signed, and on October 7, 1983, the Court issued an Order that the matter be remanded. On December 16, 1983, KU submitted additional information on nitrogen oxide emissions from the auxiliary boiler. After reviewing the additional information, EPA agrees that the emission limit should be raised. The determination is based on the following information submitted by KU:

1. The auxiliary boiler operates only a small percentage of the time (less than one percent), and only when both main boilers are not operating. Emissions from the auxiliary boiler are very small (less than one percent) compared to the main boilers.

2. Achieving 0.2 or 0.1 pound per million Btu would increase the capital cost of the boiler 15% and 50%, respectively.

3. Ambient nitrogen dioxide levels in the area are very small compared to the National Ambient Air Quality Standard.

(Secs. 160-169 of the Clean Air Act (42 U.S.C. 7470-7479))

Dated: February 22, 1984.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 84-5589 Filed 2-29-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Form Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management (FEMA) has submitted to the Office of Management and Budget the following information collection package for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New Collection
Title: State Operating Plan for Temporary Relocation (Superfund)

Abstract: Since FEMA is responsible for temporary relocation, a plan is required to obtain FEMA's approval. It supports decisions regarding State or local administration of a Federal-funded program.

Type of respondents: State or Local Governments
Number of respondents: 200
Burden hours: 4,800

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 287-9906, 500 C. Street, SW., Washington, D.C. 20472.

Comments should be directed to Ken Allen, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: February 24, 1984.

Walter A. Girstantas,
Director, Administrative Support.

[FR Doc. 84-5535 Filed 2-29-84; 8:45 am]
BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 84-6]

The Port Authority of New York and New Jersey v. New York Shipping Association, et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by the Port Authority of New York and New Jersey against the New York Shipping Association and its individual members was served February 24, 1984. Complainant alleges that respondents have violated section 15 of the Shipping Act, 1916, in connection with the basis for fringe benefit funding in Assessment Agreement LM-86.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.75. The hearing shall include oral testimony and crossexamination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that oral hearing and cross-examination are necessary for the development of an adequate record.

Bruce A. Dombrowski,
Assistant Secretary.

[FR Doc. 84-5533 Filed 2-29-84; 8:45 am]
BILLING CODE 6730-01-M

[Docket No. 84-5]

South Carolina State Ports Authority v. Georgia Ports Authority; Filing of Complaint and Assignment

Notice is given that a complaint filed by South Carolina State Ports Authority against Georgia Ports Authority was served February 23, 1984. Complainant alleges that respondent has violated sections 16 First and 17 of the Shipping Act, 1916, and section 8 of the Merchant Marine Act, 1920, by knowingly using an allegedly false, inaccurate, and misleading consulting firm report to solicit steamship lines and to divert cargo from the Port of Charleston.

This proceeding has been assigned to Administrative Law Judge Seymour Glanzer, Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that oral hearing and cross-examination are necessary for the development of an adequate record.

Bruce A. Dombrowski,
Assistant Secretary.

[FR Doc. 84-5530 Filed 2-29-84; 8:45 am]
BILLING CODE 6730-01-M

[Docket No. 84-4]

Warner Lambert Company v. The Egyptian National Line; Filing of Complaint and Assignment

Notice is given that a complaint filed by Warner Lambert Company against The Egyptian National Line was served February 23, 1984. Complainant alleges that respondent has violated section 18(b)(3) of the Shipping Act, 1916, in connection with transportation rates assessed against a particular shipment of complainant.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that oral hearing and cross-examination are necessary for the development of an adequate record.

Bruce A. Dombrowski,
Assistant Secretary.

[FR Doc. 84-5529 Filed 2-29-84; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

BankAmerica Corp.; Proposed Acquisition of BankAmerica Savings Bank

BankAmerica Corporation, San Francisco, California, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire indirectly voting shares of proposed *de novo* subsidiary, BankAmerica Savings Bank, Miami, Florida ("Bank").

Applicant states that the proposed subsidiary would engage in industrial savings bank activities, including the making of loans and other extensions of credit to individuals for personal, family or household purposes, servicing loans and other extensions of credit, engaging in the sale of travelers checks, and offering credit life and accident and health insurance directly related to extensions of credit by Bank. The aforementioned credit-related insurance activities will be conducted in conformance with Title VI of the Garn-St Germain Depository Institutions Act of 1982.

These activities would be performed from offices of Applicant's subsidiary in Miami, Florida and the geographic area to be served is the state of Florida. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether

consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than March 22, 1984.

Board of Governors of the Federal Reserve System, February 24, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-5525 Filed 2-29-84; 8:45 am]

BILLING CODE 6210-01-M

The Chase Manhattan Corp.; Formation of, Acquisition by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (49 FR 794) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 23, 1984.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33, Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation,* New York, New York; to acquire 100 percent of Lincoln First Banks, Inc., Rochester, New York, and thereby indirectly acquire Lincoln First Bank, N.A., Rochester, New York. The Chase Manhattan Corporation, New York, New York has also applied to acquire Lincoln First Trust Company of Florida, N.A., Lincoln First Real Estate Credit Corporation, Lincoln First Mortgage, Inc., Lincoln Lease/Way, Inc., Lincoln First Commercial Corporation, and Lincoln First Life Insurance Company. Applicant proposes to engage in trust activities and functions in Florida through Lincoln First Trust Company of Florida, N.A.; acting as a mortgage banking company in making, acquiring, and servicing loans and other extensions of credit secured by real estate both for its own account and for the account of others, acting as an investment or a financial advisor, and making equity and debt investments in corporations or projects designed primarily to promote community welfare, all of which activities would be engaged in through Lincoln First Real Estate Credit Corporation and Lincoln First Mortgage, Inc.; providing the service of a leasing company engaged in leasing of personal property and equipment, including motor vehicles, acting as an agent, broker or advisor in leasing such property, and making and acquiring loans and other extensions of credit, both for its own account and the account of others of a type made by a commercial finance or factoring company, all of which activities would be engaged in through Lincoln Lease/Way, Inc.; providing the services of a finance company engaged in making, acquiring, and servicing loans and other extensions of credit, both for its own account and for the account of others, such as would be made by a commercial finance or factoring company, through Lincoln First Commercial Corporation; and providing the services of an insurance company engaged in underwriting, as reinsurer, credit life and credit accident and health insurance directly related to extensions of credit by Lincoln First Bank, N.A., through Lincoln First Life Insurance Company. Lincoln First Trust Company of Florida, N.A., would serve customers in Florida from its office located in Boca Raton, Florida; Lincoln First Real Estate Credit Corporation would serve customers nationwide from its offices located in White Plains, New York; Denver, Colorado; Houston, Texas; and Newport Beach, California; Lincoln First Mortgage, Inc., would customers nationwide from its offices located in White Plains, New York and Newport Beach, California; Lincoln Lease/Way, Inc. would serve customers nationwide from its offices located in Rochester, New York; Garden City, New York; and Buffalo, New York; Lincoln First Commercial Corporation would serve customers in Central and Western New York state from its office located in Rochester, New York; and Lincoln First Life Insurance Company would serve customers in New York State from its office located in Phoenix, Arizona.

Board of Governors of the Federal Reserve System, February 27, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-5610 Filed 2-29-84; 8:45 am]

BILLING CODE 6210-01-M

Peoples Bancorp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise

noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 21, 1984.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Peoples Bancorp*, Belleville, New Jersey; to engage *de novo* through its subsidiary, Peoples Financial Services Corporation, Belleville, New Jersey, in the leasing of personal and real property or acting as agent, broker or advisor in leasing such property. The company will also perform consulting services to non-affiliated banks.

Board of Governors of the Federal Reserve System, February 27, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-5613 Filed 2-29-84; 8:45 am]

BILLING CODE 6210-01-M

State Financial Bankshares, 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 (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 23, 1984.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *State Financial Bankshares, Inc.*, Richmond, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank and Trust Company of Richmond, Kentucky, Richmond, Kentucky.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. *TCB Corporation*, Greenwood, South Carolina; to become a bank holding company by acquiring 80 percent of the voting shares of The County Bank, Greenwood, South Carolina.

C. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President), 411 Locus Street, St. Louis, Missouri 63166:

1. *First Citizens United, Inc.*, Central City, Kentucky; to become a bank holding company by acquiring 80 percent or more of the voting shares of Citizens Union Bank, Central City, Kentucky.

D. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *FB II—Farmersville, Inc.*, Farmersville, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Farmersville Bancshares, Inc., Farmersville, Texas and thereby indirectly acquire First National Bank at Farmersville, Farmersville, Texas.

2. *First Grayson Bancshares, Inc.*, Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Security National Bank of Whiteboro, Whiteboro, Texas and 100 percent of the voting shares of Collinsville State Bank, Collinsville, Texas.

Board of Governors of the Federal Reserve System, February 27, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-5611 Filed 2-29-84; 8:45 am]

BILLING CODE 6210-01-M

Turner Bancshares, Inc.; Formation of a Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the 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.

Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Turner Bancshares, Inc.*, Kansas City, Kansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Turner State Bank, Kansas City, Kansas. Comments on this application must be received not later than March 23, 1984.

Board of Governors of the Federal Reserve System, February 27, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-5612 Filed 2-29-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Regional Bulletin FPMR 3-E-145]

Supply and Procurement

February 3, 1984.

To: Heads of Federal agencies located in GSA Region 3 (Maryland, Delaware, Virginia, West Virginia, and Pennsylvania)

Subject: Planned closing of the GSA Region 3 Self-Service Store in Richmond, VA

1. *Purpose.* This bulletin announces plans for closing the GSA Region 3 Self-Service Store in Richmond, VA.

2. *Expiration date.* This bulletin expires on April 30, 1984.

3. *Background.* a. The General Services Administration is committed to providing effective and economical supply support to Government agencies. To provide this kind of support under the current budgetary limitations, it is essential that GSA make sure that the maximum benefit is obtained from every dollar spent for supply support. Accordingly, supply support functions that are cost effective should be continued or expanded as appropriate, and those that are not cost effective should be discontinued. An assessment of supply support functions indicates that the GSA Region 3 Self-Service Store in Richmond, VA, is not cost effective and should be closed. The closure of the store is planned for early spring of 1984.

b. All customers served by the Richmond Self-Service Store will be served by the Customer Supply Center in Norfolk. To make arrangements to use the Norfolk Customer Supply Center, call FTS 827-6000 or 804-441-6000. Other sources of supply include requisitioning items through the GSA stock program, obtaining items through Federal Supply Schedules or using the next closest Self-Service Store or Customer Supply Center. The regulations on priorities for use of supply sources are contained in FPMR 101-26.107.

4. *Location.* The Self-Service Store planned for closing is as follows: GSA, Self-Service Store #5, Federal Building, Room G-501, 400 N. 8th Street, Richmond, VA 23240.

5. *Agency comments.* Comments concerning the effect or impact of the closing of the Self-Service Store identified in par. 4 may be submitted to the Assistant Regional Administrator, Federal Supply and Services (3F), General Services Administration, 9th and Market Streets, Philadelphia, PA 19107 by March 30, 1984.

6. *Notification of store closure.* Once the date and other information regarding the closing is finalized, agencies will be notified in a GSA bulletin.

George P. Cordes,

Regional Administrator of General Services.

[FR Doc. 84-5505 Filed 2-29-84; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Board of Regents Subcommittee on Pricing of NLM Service; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Regents Subcommittee on Pricing of NLM Services on March 26, 1984, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 10:00 a.m. to approximately 4:00 p.m. for discussions that will aid the Board of Regents in its review of the Department of Health and Human Services Study. Attendance by the public will be limited to space available.

Mr. Kent A. Smith, Deputy Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20209, telephone number: 496-6661, will furnish a summary of the meeting, roster of committee members, and other information pertaining to the meeting.

Dated: February 23, 1984.

Betty J. Beveridge,

National Institutes of Health, Committee Management Officer.

[FR Doc. 84-5536 Filed 2-29-84; 8:45 am]

BILLING CODE 4140-01-M

National Arthritis Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Arthritis Advisory Board on March 27, 1984, 9:00 a.m. to adjournment, at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open to public, is being held to discuss the Board's activities and to continue the evaluation of the implementation of the long-range plan to combat arthritis. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the Hotel lobby.

Certain subcommittees of the Board will meet March 26, 1984. Further information, times and meeting locations of the subcommittees may be obtained by contacting Mr. William Plunkett, Executive Director, National Arthritis Advisory Board, P.O. Box 30286, Bethesda, Maryland 20205, (301) 496-1991. The agenda and rosters of the members can also be obtained from his office. Summaries of the meeting may be obtained by contacting Carole A. Frank, Committee Management Office, NIADDK, National Institutes of Health, Room 9A47, Building 31A, Bethesda, Maryland 20205, (301) 496-6917.

Dated: February 23, 1984.

Betty J. Beveridge,

National Institutes of Health, Committee Management Officer.

[FR Doc. 84-5537 Filed 2-29-84; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. D-84-731]

Manager, Cincinnati, Office; Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Redelegation of authority.

SUMMARY: The Assistant Secretary for Community Planning and Development is redelegating authority to the Manager, Cincinnati Office, to dispose of the remaining developed lots and parcels of the former Newfields New Community in the City of Trotwood, Montgomery County, Ohio.

EFFECTIVE DATE: February 8, 1984.

FOR FURTHER INFORMATION CONTACT: Grant E. Mitchell, Assistant General Counsel for New Communities, Room 10248, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Telephone (202) 755-6550. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The subject real property includes approximately 54 developed lots and parcels within the City of Trotwood. These lots are part of the former Newfields New Community currently managed by the Office of the Assistant Secretary for Community Planning and Development. Sales are expected throughout 1984. In order to have prompt closings, avoid excessive costs of managing and disposing of this property through Headquarters and avoid the necessity of returning all the closing documents to Headquarters for signature, these functions are being delegated to the Manager, Cincinnati Office.

Accordingly, the Assistant Secretary for Community Planning and Development redelegates as follows:

Section A. The Assistant Secretary for Community Planning and Development redelegates to the Manager, Cincinnati

Office the authority to dispose of the remaining developed lots and parcels of the former Newfields New Community in the City of Trotwood, Montgomery County, Ohio, and to take any necessary actions related to such disposal.

Section B. The authority redelegated under Section A may not be further redelegated.

Authority: Delegation of Authority to Assistant Secretary for Community Planning and Development, 49 FR 3935 (January 31, 1984).

Dated: February 8, 1984.

Stephen J. Bollinger,

Assistant Secretary for Community Planning and Development.

[FR Doc. 84-5618 Filed 2-29-84; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Presidential Commission on Indian Reservation Economies; Public Hearings and Site Visits

AGENCY: Presidential Commission on Indian Reservation Economies, Interior.

ACTION: Notice of additional hearing scheduled for March.

SUMMARY: In the recent listing on page 6183 of the Federal Register dated February 17, 1984, regarding hearings and site visits of the Presidential Commission on Indian Reservation Economies, the following hearing is scheduled for March.

1. *March 15, 1984 (Thursday)—Hearing,* J.W. Marriott Hotel, 1331 Pennsylvania Avenue, Northwest, Washington, D.C. 20004, Time: 9:00 a.m.–5:00 p.m.

This hearing was not published in the February 17 Federal Register due to delay in securing a suitable site in Washington, D.C. for the hearing.

The purpose of the hearing will be to receive both oral and written testimony from Indian leaders, Indian businessmen and other representatives from the tribal, public and private sectors concerning the development and sustainment of viable economic enterprises within Indian reservation environments.

Parties interested in testifying should present their testimony in writing either in advance of the hearing or at the onsite registration for the hearing. An oral summary of the testimony may be given at the hearing. Those desiring to submit written testimony and make an oral presentation should submit in writing a brief statement of the general nature of the testimony to be presented, the names and addresses of proposed participants and an indication of the approximate time required to make their presentation. This information should be sent to Sandra Gjelde, Office of Public, Tribal and Governmental Affairs, Presidential Commission on Indian Reservation Economies, Suite 765, 1717 H Street, NW., Washington, D.C. 20006. Questions regarding testimony or registration procedures may also be directed to Ms. Gjelde at (202) 653-2430. The agenda for oral testimony will be completed five days in advance of the hearing.

Any person attending a hearing who has not requested an opportunity to speak five days in advance of the meeting, will be allowed to make an oral presentation at the conclusion of the hearing, if time permits and at the discretion of the Co-Chairman.

Eric Rudert,

Deputy Director, Presidential Commission on Indian Reservation Economies.

[FR Doc. 84-5521 Filed 2-29-84; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Indian Affairs

Walker River Indian Irrigation Project, Nevada; Annual Operation and Maintenance Charges

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Public notice.

SUMMARY: The purpose of this notice is to change the annual Indian per acre assessment rate for the operation and maintenance of the irrigation facilities on the Walker River Indian Irrigation Project per decision by Deputy Assistant Secretary—Indian Affairs (Operations). The change is from $5.50 to $1.00 per irrigable acre for Indian owned land farmed and operated by Indians.

EFFECTIVE DATE: This notice shall be effective on March 15, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Hunter, Superintendent, Bureau of Indian Affairs, Western Nevada Agency, 5533 Mark Twain Avenue, Carson City, Nevada 89701, telephone number (702) 887-3500.

SUPPLEMENTARY INFORMATION: This notice is issued under authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 209 DM8 and redelegated by the Deputy Assistant Secretary for Indian Affairs (Operations) to the Area Director in 10 BIAM 3. The current operation and maintenance charge was established April 5, 1983 and published as a notice at 48 FR 14759. The full assessment charge for operation and maintenance of the Walker River Indian Irrigation Project was established at $11.00 per irrigable acre for non-Indian owned land and Indian owned land leased to non-Indians. The Indian assessment rate was established at $5.50 per irrigable acre for Indian owned land farmed and operated by Indians. On May 4, 1983, the Walker River Paiute Tribe filed a timely notice of Appeal of the Indian assessment rate pursuant to 25 CFR 2.3 and 2.10(a). The Walker River Paiute Tribe statement of reasons for the appeal of the Indian assessment rate indicated that the Area Director attempted amendment of the rate fixing standards enabling a fixing of an Indian rate without regard to the ability of the Indians as a whole to pay such resulting rate. The Deputy Assistant Secretary (Operations) determined that the Indian rate in this case was based solely on the difference between available appropriated funds and the full assessment rate, and rescinded the decision to increase the Indian assessement rate from $1.00 to $5.50 per irrigable acre. A notice is to be placed in the Federal Register in accordance with this decision.

Notice shall read as follows:

Walker River Indian Irrigation Project, Nevada Annual Operation and Maintenance Charges

Annual Per Acre Assessment—The annual assessment against land to which water can be delivered under the Walker River Indian Irrigation Project in Nevada for operation and maintenance of the Project is hereby fixed at $11.00 per irrigable acre for non-Indian land and Indian owned land leased to non-Indians, and $1.00 per irrigable acre for Indian owned land farmed and operated by Indians.

Vernon Palmer,

Acting Assistant, Phoenix Area Director.

[FR Doc. 84-5523 Filed 2-29-84; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AA-6691-C]

Alaska Native Claims Selection; Oceanside Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 12(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611 (1976)) (ANCSA), will be issued to Oceanside Corporation, for approximately 1 acres. The lands involved are within the Seward Meridian, Alaska:

T. 50 S., R. 65 W.

The decision to issue conveyance will be published once a week, for four (4) consecutive weeks, in the ANCHORAGE TIMES upon issuance of the decision. For information on how to obtain copies, contact the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal Government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations in 43 CFR Part 4, Subpart E, as revised.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of Conveyance Management (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of the decision by personal service or certified mail, return receipt requested, shall have thirty days from the receipt of the decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt, and parties who received a copy of the decision by regular mail which is not certified, return receipt requested, shall have until April 2, 1983 to file an appeal.

Any party known or unknown who is adversely affected by the decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of Conveyance Management.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

17th Coast Guard District, P.O. Box 3–5000, Juneau, Alaska 99802

Oceanside Corporation, Perryville, Alaska 99648

Bristol Bay Native Corporation, P.O. Box 198, Dillingham, Alaska 99576

Barbara A. Lange,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84-5480 Filed 2-29-84; 8:45 am]

BILLING CODE 4310-JA-M

[A-11646]

Conveyance of Public Land; Reconveyed Land Opened to Entry; Arizona

February 22, 1984.

Notice is hereby given that the following described land has been transferred out of Federal ownership pursuant to section 206 of the Federal Land Policy and Management Act of 1976 in exchange for privately owned land. The land transferred to private ownership is described as:

Gila and Salt River Meridian, Arizona

T. 5 S., R. 30 E.,
Sec. 31, lots 14, 17.
Comprising 10.22 acres in Greenlee County.

Land acquired by the United States is described as:

T. 6 S., R. 30 E.,
Sec. 4, lot 1.
Comprising 22.39 acres in Greenlee County.

The exchange was made based on approximately equal values.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public land and acquisition of private land by the Federal Government.

The land acquired by the Federal Government in this exchange will be open to entry under the general land laws, including the mining and mineral leasing laws, at 10:00 a.m. on March 26, 1984.

The following described lands were originally included in the application for selection as shown in the Notice of Realty Action published in the Federal Register October 16, 1981. Any segregative effect invoked by the NORA terminated on October 15, 1983, and the lands are open to entry under the general land laws, including the mining and mineral leasing laws:

T. 8 S., R. 26 E.,
Sec. 21, NE¼NE¼, W½NE¼, E½NE¼NW¼, E½W½NE¼NW¼, SE¼NW¼NE¼SW¼, W½SW¼, NW¼SE¼;
Sec. 28, NW¼NW¼.

Mildred C. Kozlow,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-5546 Filed 2-29-84; 8:45 am]

BILLING CODE 4310-32-M

Conveyance of Public Lands; Idaho

February 24, 1984.

Notice is hereby given that pursuant to the Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713), patents were issued to the following:

Milton H. Reese and Evelynn J. Reese, Paul, Idaho for the following-described lands:

Butte County, Serial No. I-19721A, Boise Meridian, Idaho

T. 4 N., R. 24 E.,
Sec. 17, E½NE¼.
Containing 80.00 acres.

Sharon D. Arrizubieta, May, Idaho, for the following-described lands:

Lemhi County, Serial No. I-19832D, Boise Meridian, Idaho

T. 14 N., R. 23 E.,
Sec. 7, SW¼SE¼.
Containing 40.00 acres.

The purpose of this notice is to inform the public and interested State and local governmental officials of the conveyance.

Louis B. Bellesi,

Deputy State Director for Operations.

[FR Doc. 84-5547 Filed 2-29-84; 8:45 am]

BILLING CODE 4310-GG-M

[M 59099]

Conveyance of Public Land; Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of conveyance of public land in McCone County, Montana.

SUMMARY: Notice is hereby given that pursuant to Section 203 of the Act of October 21, 1976 (43 U.S.C. 1713 (1976)), the following described land was conveyed to Roy J. Sorley and Margaret J. Sorley.

Principal Meridian, Montana

T. 22 N., R. 49 E.,
Sec. 20, SW¼SW¼.
Containing 40 acres.

The purpose of this notice is to inform State and local government officials and other interested parties of the conveyance of the land to the Sorleys.

FOR FURTHER INFORMATION CONTACT: Ed Croteau, Montana State Office, 406-657-6082.

Edward H. Croteau,

Chief, Lands Adjudication Section.

February 23, 1984.

[FR Doc. 84-5542 Filed 2-29-84; 8:45 am]

BILLING CODE 4310-DN-M

[U-45312]

Proposed Land Exchange Between the Bureau of Land Management and Energy Fuels, Ltd.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on proposed exchange.

SUMMARY: This notice is to advise the public that the San Juan Resource Area of the Bureau of Land Management (BLM), Utah, and Energy Fuels, Ltd., are proposing a land exchange.

SUPPLEMENTARY INFORMATION: The BLM has determined that 2591.94 acres of public land identified as Selected Land are suitable to exchange for 3025.94 acres of private land identified as Offered Lands under the Authority of Section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743). The purpose of the exchange is to acquire the lands to consolidate Federal holdings in a wilderness study area, more efficiently manage recreation access and uses in the Price Canyon Recreation Area, and improve elk and deer habitat.

The 2591.94 acres of public land to be conveyed will be subject to the following conditions:

1. Compliance with section 106 of the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470), for protection of cultural resources.
2. A reservation for all existing rights-of-way.
3. A reservation for ditches and canals constructed by the authority of the United States. Act of August 30, 1890. (26 Stat. 391; 43 U.S.C. 945; (1979).)
4. A reservation of all minerals with the right to prospect for, mine and remove the same under applicable laws and such regulations as the Secretary may prescribe.

The 2591.94 acres of public land currently supports portions of two grazing preferences and range improvements as follows:

1. Keith N. Ivins has 152 active AUMs, and 136 suspended AUMs, ½ mile of fenceline, and a stock reservoir within the Selected land. Upon issuance of patent, the 288 AUMs are hereby cancelled, in accordance with § 4110.4-2(b). Energy Fuels Ltd. will be required to pay Mr. Ivins $2,000 prior to issuance of patent for compensation of the range improvements in accordance with § 4120.6-6(c).
2. Lynn J. Patterson has 10 active AUMs and 4 suspended AUMs within the Selected Lands. Upon issuance of patent, the 14 AUMs are hereby cancelled in accordance with § 4110.4-2(b).

In accordance with 43 CFR 2201.1(b) this notice shall segregate the Selected public land and the Federal minerals on Offered private land from further appropriations under all public land laws, including the mining laws. This segregation shall terminate upon issuance of patent and conveyance or 2 years from the date of this publication, whichever occurs first.

Selected Lands

T. 37 S., R. 22 E., SLBM,
Sec. 27: Lots 1 and 4;
Sec. 29: SE¼SE¼;
Sec. 33: SW¼.
T. 38 S., R. 22 E., SLBM,
Sec. 4: Lots 1, 2, 3, 4, S½N½, SW¼, W½SE¼, W½SE¼, W½E½SE¼, E½SE¼;
Sec. 5: Lots 1, 2, 3, and 4, S½N½, S½;
Sec. 6: Lots 1, 2, S½NE¼, SE¼;
Sec. 8: NE¼;
Sec. 9: All.

2591.43 acres in San Juan County.

Offered Lands

T. 11 S., R. 9 E., SLBM (Utah County),
Sec. 31: Lots 3 and 4, SW¼NE¼.
T. 12 S., R. 8 E., SLBM (Carbon County),
Sec. 13: E½SE¼, SW¼SE¼.
T. 12 S., R. 9 E., SLBM (Carbon County),
Sec. 6: Lots 2, 4, 5, and 6, E½SW¼, NE¼SE¼, SE¼SE¼;
Sec. 7: Lots 1, 2, 3, and 4, N½NE¼, SW¼NE¼, E½SW¼, SE¼;
Sec. 8: S½NW¼;
Sec. 17: NW¼NW¼, SE¼NW¼, NW¼SW¼, SE¼SW¼, NW¼SE¼, SE¼SE¼;
Sec. 18: Lots 1, 2, 3, and 4, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 19: Lots 1 and 2, W½NE½, E½NW¼, N½SE¼, SW¼SE¼;
Sec. 20: NE¼NE¼, SW¼NE¼, NE¼NW¼, SW¼NW¼, N½SE¼;
Sec. 21: NE¼SW¼;
Sec. 30: NW¼NE¼.
T. 20 S., R. 10 E., SLBM (Emery County).
Sec. 34: NW¼NW¼, S½N½, N½S½, SE¼SE¼;
Sec. 35: NW¼SW¼.

3025.94 acres in Carbon, Emery, and Utah Counties.

Detailed information concerning the exchange is available at the Moab District Office, P.O. Box 970, Moab, Utah 84532.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Utah State Director, University Club Building, 136 E. South Temple, Salt Lake City, Utah 84111. Any adverse comments will be evaluated by the State Director, who may vacate or modify this notice. In absence of any action by the State Director, this notice will represent the final determination of the Department of the Interior.

Gene Nodine,

District Manager.

February 24, 1984.

[FR Doc. 84-5543 Filed 2-29-84; 8:45 am]

BILLING CODE 4310-DQ-M

[M-58537]

Realty Action; Exchange of Public and Private Lands; Montana

AGENCY: Bureau of Land Management, Lewistown District Office, Interior.

ACTION: Notice of Realty Action M-58537, Exchange of public and private lands in Fergus County.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Management Act of 1976, 43 U.S.C. 1716.

Principal Meridian, Montana

T. 21 N., R. 19 E.,
Sec. 35, SW¼
T. 20 N., R. 20 E.,
Sec. 4, W½SW¼;
Sec. 5, lot 12, and E½SE¼;
Sec. 6, lots 1 through 4, 7 through 14, and 17 through 19;
Sec. 8, N½.
T. 21 N., R. 20 E.,
Sec. 31, lots 3 and 4, NE¼SW¼, NE¼SE¼SW¼, and W½SE¼SW¼.

Aggregating 1,430.59 Acres of Public land.

In exchange for these lands, the United States will acquire the following described lands:

Principal Meridian, Montana

T. 23 N., R. 22 E.,
Sec. 17, lots 6 and 7, and NW¼SW¼;
Sec. 18, lot 13 and SW¼SE¼;
Sec. 19, lots 1 and 2.

Aggregating 241.1 acres of Private Land.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, Lewistown District Office, Airport Road, Lewistown, Montana 59457. Any adverse comments will be evaluated by the BLM, Montana State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final

determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the environmental assessment and land report, is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.
2. A reservation to the United States of all minerals in the Federal lands being transferred.
3. All valid existing rights (e.g., rights-of-way, easements and leases of record).
4. Value equalization by cash payment or acreage adjustment.
5. The exchange must meet the requirements of 43 CFR 4110.4-2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with State and local officials. The public interest will be served by completion of this exchange.

Dated: February 22, 1984.

Glenn W. Freeman,

District Manager.

[FR Doc. 84-5545 Filed 2-29-84; 8:45 am]

BILLING CODE 4310-DN-M

Designation of an Area of Critical Environmental Concern; Bakersfield District, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of public lands within the Mono Lake Ecological Area as an Area of Critical Environmental Concern (ACEC).

SUMMARY: Pursuant to the authorities in the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (Section 202(c)(3)) and in 43 CFR 1601.6-7, I hereby designate the following described lands as The Mono Lake Ecological Area of Critical Environmental Concern (ACEC)

Mt. Diablo Meridian

T. 1N., R. 26E.,
Sec. 12, fractional S½S½ containing 37.67 acres.

T. 1N., R. 27E.,
Sec. 17, fractional S½S½ containing 43.33 acres;
Sec. 18, N½ lot 2 containing 19.68 acres, S½ lot 2 containing 40 acres, fractional SW¼NE¼ containing 20.73 acres, fractional NE¼SW¼ containing 39.59 acres, W½SE¼, SE¼SW¼, fractional W½SE¼ containing 43.77 acres, fractional SE¼SE¼ containing 21.86 acres;
Sec. 19, all;
Sec. 20, N½NE¼, W½;
Sec. 30, W½.

T. 2N., R. 26E.,
Sec. 10, S½S½;
Sec. 11, lots 3, 4, 5, W½SW¼;
Sec. 13, unsurveyed fractional SE¼SE¼ containing 11 acres;
Sec. 14, lots 1, 2, 3, 4, 5, W½NW¼;
Sec. 15, all;
Sec. 21, lots 1, 2, 3, 4, 5, N½N½;
Sec. 22, lots 1, 2, 3, NW¼NE¼, NW¼;
Sec. 23, lot 1;
Sec. 24, unsurveyed fractional E½ containing 87 acres.

T. 2N., R. 27E.,
Sec. 18, fractional SW¼SW¼ containing 1.00 acre;
Sec. 19, lot 1, unsurveyed fractional W½ containing 98 acres;
Sec. 20, lots 1, 2;
Sec. 29, lots 1, 2, 3, W½NW¼;
Sec. 30, lots 1, 2, 3, 4, 5, E½NE¼, SW¼NE¼, E½SW¼, SE¼.

All unsurveyed relicted lands attached to:

T. 1N., R. 26E.,
Sec. 10, fractional E½SE¼;
Sec. 12, fractional S½S½;
Sec. 13, fractional W½NW¼;
Sec. 14, fractional SE¼NE¼.

T. 1N., R. 27E.,
Sec. 11, fractional SE¼SW¼, fractional E½SE¼, fractional SW¼SE¼;
Sec. 12, fractional NE¼NE¼, fractional NW¼, fractional NW¼SW¼;
Sec. 14, fractional N½NW¼;
Sec. 15, fractional S½NE¼, fractional N½SW¼;
Sec. 17, fractional S½S½;
Sec. 18, N½ lot 2, fractional SW¼NE¼, fractional NE¼SW¼, fractional W½SE¼, fractional SE¼SE¼.

T. 1N., R. 28E.,
Sec. 6, fractional E½SW¼, fractional SW¼SW¼.

T. 2N., R 26E.,
Sec. 1, lot 2;
Sec. 2, lots 1, 2;
Sec. 11, lots 1, 2, 3, 4, 5;
Sec. 14, lots 1, 2, 3, 4, 5;
Sec. 21, lots 1, 2, 3, 4, 5;
Sec. 22, lots 1, 2, 3;
Sec. 23, lot 1:
Sec. 24, unsurveyed fractional E½.

T. 2N., R. 27E.,
Sec. 1, lots 1, 2;
Sec. 6, lots 1, 2, 3;
Sec. 18, fractional SW¼SW¼;
Sec. 19, lot 1, unsurveyed fractional W½;
Sec. 20, lots 1, 2;
Sec. 29, lots 1, 2, 3;
Sec. 30, lots 1, 2, 3, 4, 5.

T. 2N., R. 28E.,
Sec. 6, fractional S½NW¼, fractional W½SE¼, fractional SE¼SE¼;
Sec. 8, fractional NW¼NW¼, fractional SE¼NW¼, fractional SE¼;
Sec. 21, fractional SW¼NW¼, fractional SW¼;
Sec. 28, fractional NW¼, fractional W¼SW¼;
Sec. 29, fractional SE¼SE¼;
Sec. 32, fractional N½NE¼, fractional E½SW¼.

T. 3N., R27E.,
Sec. 31, lots 1, 2, 3;
Sec. 32, lots 1, 2, 3, 4;
Sec. 33, lots 2, 3, 4;
Sec. 34, lots 1, 2;
Sec. 35, lots 1, 2, 3, 4.

All unsurveyed islands and islets.

The area of unsurveyed relicted public lands is approximately 10,860 acres (based on shoreline elevation of 6,380 ft.).

The Mono Lake Ecological Area ACEC contains approximately 15,200 acres of public land.

SUPPLEMENTARY INFORMATION: Mono Lake is located on the eastern slope of the Sierra Nevada Mountains in Mono County, California.

Mono Lake is one of North America's most varied and spectacular landscapes. The economy of Mono County is based almost entirely on outdoor recreation where visitors expect to see clean air and dramatic scenery. The entire Mono Basin is critically important to wildlife. The basin supports 95% of the State's nesting California gulls and 50% of the world's population of Wilson's phalarope.

Water diversions over the past 40 years have resulted in a drop in surface elevation of approximately 40 feet. Nesting habitat for California gulls on Negit Island has been eliminated. Brine shrimp and brine flies, the primary food source for gulls and migratory waterbirds, are predicted not to survive salt and alkali concentrations when the lake level stabilizes.

Scenic values have been degraded by exposure of more than 11,000 acres of lake bottom sediments (legally termed "relicted lands"). These sediments are easily lifted by wind. Large quantities of suspended alkali dust have, on several occasions, exceeded State and Federal Air Quality Standards for total suspended particulates (TSP). Preliminary results of research indicate the alkali deposits have caused decreased reproduction and increased mortality in the Greasewood (*Sarcobatus vermiculatus*) plant community near Black Point.

Management of the ACEC will be directed at maintaining the existing resource values at current levels through means other than constraining or controlling lake level elevation. Management as an ACEC will include the following resource use restrictions:

1. A seasonal closure to all public access to gull nesting islands and islets from April 1 to August 1 of each year;
2. Livestock grazing will not be authorized on the relicted lands around Mono Lake between the 6417 foot elevation and the shoreline;
3. ORV use will be limited to existing roads and trails;
4. A closure to all vehicle use within the south tufa grove; and
5. No surface occupancy stipulations on energy and mineral development leases.

Specific details of the resource values and special management attention required to protect these values are included in the ACEC plan element and the Management Framework Plan (MFP) for the Bodie-Coleville Planning Area. The area and management criteria were developed through the planning process which included several stages of public participation. Opportunities for public participation were provided at the URA and MFP stages of both the Benton-Owens Valley and Bodie-Coleville planning efforts, and during the development of the ACEC plan element. An environmental assessment (EA) was prepared to analyze the impacts resulting from designation of the Mono Lake Ecological ACEC and six other alternatives. All of these documents are on file in the Bakersfield District Office and Bishop Resource Area Office.

FOR FURTHER INFORMATION CONTACT: Tim Salt, Assistant District Manager for Lands and Renewable Resources, Bureau of Land Management, Bakersfield District, 800 Truxtun Avenue, Rm. 311, Bakersfield, California, 93301, (805) 861-4191, or Jim Morrison, Area Manager, Bureau of Land Management, Bishop Resource Area, 873 N. Main St., Suite 201, Bishop, California, 93514, (619) 872-4881.

Dated: February 24, 1984.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 84-5521 Filed 2-23-84; 8:45 am]

BILLING CODE 4310-40-M

Designation of Public Lands Within the Sonoma-Gerlach Resource Area, Winnemucca District, Nevada, as the Soldier Meadow Desert Dace Research Natural Area (RNA)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Public lands within the Soldier Meadow area are designated a Research Natural Area under authority of 43 CFR Part 8223. The designated area contains 307.22 acres located in Humboldt County, Nevada and described as:

Mt. Diablo Meridian, Nevada

T. 40 N., R. 24 E.,
Sec. 23, Lots 2, 3, 5, 6, 8, 9, 12.

The area can be located on U.S.G.S. 7.5 minute Mud Meadows Quadrangle.

EFFECTIVE DATE: The Soldier Meadow Desert Dace RNA designation becomes effective the date of this notice.

ADDRESS: Frank C. Shields, District Manager, Winnemucca District, Bureau of Land Management, Winnemucca, NV 89445.

SUPPLEMENTARY INFORMATION: The primary objective in designating the Soldier Meadow RNA is to maintain and protect that portion of the warm springs ecosystem on public lands necessary for the desert dace (Eremichthys acros) population endemic to the system. The dace has been declared rare by the State of Nevada and sensitive by the State of Nevada and the Bureau of Land Management. While public lands constitute only a small portion of the entire warm springs, designation can enable monitoring of the habitat system through the springs located on public lands.

The Soldier Meadow RNA was formally designated an Area of Critical Environmental Concern on September 6, 1982. The area is managed under a Habitat Management Plan approved on April 15, 1983.

Scientific research and day-use will be permitted as long as it complies with the non-destructive limitations which will leave the system unmodified and intact.

The area has not been withdrawn from mineral entry. Surface disturbance due to mineral entry will be regulated under 43 CFR Part 3809. Oil, gas and geothermal leasing will be allowed with the stipulation of no surface occupancy.

Rights-of-way, land disposal, campgrounds and organized events such as motorcycle races will not be permitted.

Allowable uses include hunting in accordance with state regulations and livestock grazing as authorized by the Bureau of Land Management.

Dated: February 21, 1984.

Frank C. Shields,

District Manager.

[FR Doc. 84-5543 Filed 2-23-84; 8:45 am]

BILLING CODE 4310-HC-M

[OR 34151]

Realty Action; Noncompetitive Sale of Public Land in Benton County, Oregon

February 23, 1984.

This notice supersedes and replaces that notice published in the Federal Register, February 18, 1982 (FR Doc. 82-4361).

The following described land has been examined and found suitable for sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713):

Willamette Meridian, Oregon

T. 13 S., R. 7 W.,
Sec. 19, Lot 5.

The area described contains 0.44 acre.

The land will be sold directly to Mary France, owner of a residence that partly occupies the land, at the appraised fair market value. It has been determined that the parcel is difficult and uneconomic to manage as part of the public lands because of the improvement. The sale will resolve a nonwillful unauthorized occupancy, an important public objective.

The patent will contain the following reservations:

1. A right-of-way for ditches or canals.
2. All mineral deposits in the land.

The patent will be subject to:

1. Section 24 of the Federal Power Act.
2. Those rights granted by Oil and Gas Lease OR 26303 and any authorized extension of this lease.

Detailed information concerning the sale is available for review at the Salem District Office, (1717 Fabry Rd. SE) P.O. Box 3227, Salem, OR 97302.

For a period of 45 days from the date of this notice interested parties may submit comments to the Alsea Area Manager, Bureau of Land Management, at the above address. Any adverse comments will be evaluated by the Salem District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the Salem District Manager, this realty action will become the final determination of the Department of the Interior.

John H. Mears,

Alsea Area Manager.

[FR Doc. 84-5544 Filed 2-23-84; 8:45 am]

BILLING CODE 4310-33-M

[U-52447]

Realty Action; Sale of Public Lands in Grand and San Juan Counties, Utah

AGENCY: Bureau of Land Management, Utah, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, based upon land use plans and field examination, has determined that the following described lands are suitable for sale at no less than fair market value, under the authority of Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1716).

Parcel	Legal description	Acreage	Fair market value
A	T. 27 S., R. 23 E., SLB&M, sec 6, lot 1.	40.00	$16,000
B	T. 26 S., R. 22 E., SLB&M, sec. 17, lot 49.	2.47	6,000
C	T. 26 S., R. 22 E., SLB&M, sec. 17, lot 62.	2.47	3,000

The parcels will be offered for sale by sealed bid on June 1, 1984.

The terms and conditions applicable to the sale are:

1. The sale of the parcels will be subject to valid existing rights including the following:

Parcel A

a. U-25183, a ten-year oil and gas lease effective April 1, 1974.

Parcel B

a. U-28563, a ten-year oil and gas lease effective January 1, 1975.

b. A 33 foot easement to the west boundary and a 16.5 foot easement on the east boundary reserved to Grand County for roads and public utilities.

c. A 20 foot right-of-way to Spanish Valley Water and Sewer.

Parcel C

a. U-28563, a ten-year oil and gas lease effective January 1, 1975.

b. 16.5 foot easements on the west and south boundaries reserved to Grand County for roads and public utilities.

2. All minerals will be reserved to the United States.

Federal law requires that all bidders by U.S. citizens, or, in the case of corporations, be authorized to own real estate in Utah. Bids must be made by a principal or his agent be sealed bid mailed or delivered to the Bureau of Land Management, Grand Resource Area Office, Sand Flats Road, P.O. Box M, Moab, Utah 84532 after 7:45 a.m. on May 21, 1984 and prior to 3:00 p.m. on June 1, 1984. A bid must be in a sealed envelope accompanied by a certified check, postal money order, bank draft or cashier's check, made payaple to the Department of the Interior, Bureau of Land Management for not less than one-fifth of the amount of the bid. The envelope must be marked in the lower left-hand corner as follows: "Bid for Public Sale, Serial # U-52447, Parcel——, Grand/San Juan Counties. Final date of sale, June 1, 1984".

Bids will not be accepted for less than the appraised fair market value.

The sealed bids will be opened publicly after 3:00 p.m. on June 1, 1984 at the Grand Resource Area Office. The high bid for each parcel will be declared by the authorized officer. If two or more envelopes are received containing valid bids of the same amount, the determination of which is to be considered the high bid will be by drawing.

A decision will be mailed to the high bidder for each parcel. Within 30 days of receipt of the decision, a successful bidder shall submit the remainder of the full price to the BLM Grand Resource Area Office. Failure to do so shall result in cancellation of the sale of the parcel and the deposit shall be forfeited and disposed of as other receipts of sale. The bid will either be returned, accepted, or rejected in writing within 30 days of the sale date.

If a parcel is not sold on the day of the sale, it will be offered for sale by sealed bid anytime after the original sale. The sealed bids will be opened at 7:45 a.m. on the first Monday of every month. This will continue until all parcels are sold or until the appraisal is no longer valid. Sealed bids, prepared as described above, should be mailed or delivered to the Bureau of Land Management, Grand Resource Area Office, Sand Flats Road, P.O. Box M, Moab, Utah 84532.

From the date of this notice until May 18, 1984 interested parties may submit comments to the Utah State Director, Bureau of Land Management, University Club Builiding, 136 E. South Temple, Salt Lake City, Utah 84111.

Any adverse comments will be evaluated by the State Director who may vacate or modify this reality action and issue a final determination of the Department of the Interior.

Additional information is available from the Moab District Office, 82 E. Dogwood, P.O. Box 970, Moab, Utah 84532, or the Grand Resource Area Office, P.O. Box M, Moab, Utah 84532.

Gene Nodine,

District Manager.

February 24, 1984.

[FR Doc. 84-5548 Filed 2-29-84; 8:45 am]

BILLING CODE 4310-DQ-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: This Notice announces that Exxon Company, U.S.A., Unit Operator of the Grand Isle Block 16 Federal Unit Agreement No. 14-08-001-2932, submitted on February 16, 1984, a proposed supplemental plan of development/production describing the activities it proposes to conduct on the grand Isle Block 16 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Manager, Gulf of Mexico Region, Minerals, Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in development and production plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: February 22, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-5577 Filed 2-29-84; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Huffco Petroleum 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 Huffco Petroleum Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 3523, Block 509, 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 Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on February 23, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico 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: Mr. Mike Joseph, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0867.

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 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 Section 250.34 of Title 30 of the CFR.

Dated: February 23, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–5563 Filed 2–29–84; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Council of the National Park System Advisory Board; Reestablishment

Pursuant to the authority contained in Section 14(a) of the Federal Advisory Committee Act (Pub. L. 92–463), the Secretary of the Interior has determined that reestablishment of the Council of the National Park System Advisory Board is necessary and in the public interest.

The purpose of the committee is to participate in activities of, and to further the purposes of, the National Park System Advisory Board in advising the Secretary of the Interior in regard to matters relating to the National Park System.

The General Services Administration concurred in the reestablishment of this committee on February 22, 1984.

Further information regarding this committee may be obtained from Shirley M. Luikens, Advisory Boards and Commissions, National Park Service, Department of the Interior, Washington, D.C. (202–343–2012).

Dated: February 24, 1984.

David L. Jervis,

Acting Associate Director, Planning and Development, National Park Service.

[FR Doc. 84–5537 Filed 2–29–84; 8:45 am]

BILLING CODE 4310–70–M

Cape Cod National Seashore Advisory Commission; Renewal

Pursuant to the authority contained in Section 14(a) of the Federal Advisory Committee Act (Pub. L. 92–463), the Secretary of the Interior has determined that renewal of the Cape Cod National Seashore Advisory Commission is necessary and in the public interest.

The purpose of the committee is to advise the Secretary of the Interior on matters relating to the Cape Cod National Seashore.

The General Services Administration concurred in the renewal of this committee on February 22, 1984.

Further information regarding this committee may be obtained from Shirley M. Luikens, Advisory Boards and Commissions, National Park Service, Department of the Interior, Washington, D.C. 20240 (202–343–2012).

Dated: February 24, 1984.

David L. Jervis,

Acting Associate Director, Planning and Development, National Park Service.

[FR Doc. 84–5533 Filed 2–29–84; 8:45 am]

BILLING CODE 4310–70–M

Martin Luther King, Jr., National Historic Site and Preservation District Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 10:30 a.m. on Thursday, March 22, 1984, at the Martin Luther King, Jr., Center for Non-Violent Social Change, Inc., Freedom Hall, Room 261, 449 Auburn Avenue NE., Atlanta, Georgia 30312.

The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to consult with the Secretary of the Interior on matters of planning, development and administration of the Martin Luther King, Jr., National Historic Site. The purpose of this meeting will be to update the Commission on park planning and operations.

The members of the Advisory Commission are as follows:

Mr. William Allison, chairman
Mr. John H. Calhoun, Jr.
Dr. Elizabeth A. Lyon
Mr. C. Randy Humphrey
Mrs. Christine King Farris
Mr. Handy Johnson, Jr.
Mr. James Patterson
Mrs. Freddye Scarborough Henderson
Mrs. Millicent Dobbs Jordan
Mr. John W. Cox
Reverend Joseph L. Roberts, Jr.
Mrs. Coretta Scott King, Ex-Officio Member
Director, National Park Service, Ex-Officio Member

The meeting will be open to the public; however, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact Janet C. Wolf, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue, NE., Atlanta, Georgia 30312; Telephone 404/221–5190. Minutes of the meeting will be available approximately 4 weeks after the meeting.

Dated: February 15, 1984.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 84–5532 Filed 2–29–84 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–137]

Import Investigations; Certain Heavy-Duty Staple Gun Tackers; Issuance of Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has issued a general exclusion order in the above-captioned investigation.

Authority: 19 U.S.C. 1337.

SUPPLEMENTARY INFORMATION: The presiding officer issued an initial determination on November 28, 1983, in which he determined that there has been a violation of section 337 in the unauthorized importation and sale of certain heavy-duty staple gun tackers by reason of the infringement of the common law trademark in the configuration of the Model T-50 staple gun tacker owned by complainant Arrow Fastener Co., Inc., the effect and tendency of which importation and sale was to substantially injure the relevant domestic industry.

On December 27, 1983, the Commission determined not to review the presiding officer's initial determination, thereby allowing it to become the Commission determination on violation of section 337. The Commission requested written submissions on the issues of remedy, the public interest, and bonding from the parties, other government agencies, and the public. Complainant, the Commission investigative attorney, and former respondent Test-Rite Int'l (Taiwan) Ltd. filed written submissions; no other submissions were received.

Copies of the Commission's Action and Order, its Opinion, and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0148.

Issued: February 24, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-5533 Filed 2-29-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30365]

Rail Carriers; Willamina & Grand Ronde Railroad Co.; Abandonment Exemption in Polk County, OR

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Willamina & Grand Ronde Railroad Company (WGR) has filed a petition under 49 U.S.C. 10505 seeking exemption for abandonment of a 2.8 mile segment of its track in Polk County, OR. Railway Labor Executives' Association and Erickson Hardwood Company (Erickson) (the only shipper located on the line) filed letters in opposition to the abandonment. The Commission has determined that the notice and comment procedure should be instituted because the impact of the proposed abandonment cannot be ascertained from the present record.

DATES: Comments must be filed with the Commission and served on WGR's and Erickson's representatives by April 2, 1984. Replies to the comments must be filed by April 20, 1984.

ADDRESSES: Send comments referring to Finance Docket No. 30365 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Representatives: David P. Root, P.O. Box 100, Willamina, OR 97396

(3) Daniel Erickson, P.O. Box 248, Grande Ronde, OR 97347.

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: February 23, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-5522 Filed 2-29-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Proposed Consent Decree Pursuant to Clean Air Act; Phelps Dodge Refining Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 16, 1984, a proposed consent decree in *United States* v. *Phelps Dodge Refining Corporation,* Civil Action No. 83-1235 was lodged with the United States District Court for the Eastern District of New York.

The proposed consent decree provides for compliance with both the New York State Implementation Plan (SIP) and the Clean Air Act. The decree permanently enjoins and restrains Phelps Dodge's operation of its Maspeth, Queens facility in violation of the SIP opacity regulations.

The Department of Justice will receive for a period of thirty (30) days from the date of this notice written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Phelps Dodge Refining Corporation,* D.J. No. 90-5-2-1-563.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of New York, U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201; and at the Region 2 Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 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.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-5585 Filed 2-29-84; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 84-21]

Government-Owned Inventions; Availability for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly foreign licensing

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.00 each ($10.00 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

DATE: March 1, 1984.

FOR FURTHER INFORMATION CONTACT: National Aeronautics and Space Administration, John G. Mannix, Director of Patent Licensing, Code GP, Washington, D.C. 20546, telephone (202) 453-2430.

Patent application 465,363: Medical Clip and Process; filed February 10, 1983
Patent application 511,363: Tower Evaporator; filed July 6, 1983
Patent application 512,795: Phosphorus-Containing Imide Resins; filed July 11, 1983
Patent application 522,629: Polymers of Phosphonylmethyl-2,4- and -2,6-Diamino Benzenes and the Like; filed August 12, 1983
Patent application 526,770: Thin Film Strain Transducer; filed August 26, 1983
Patent application 526,739: Rotary Stepping Device With Memory Metal Actuator; filed August 26, 1983
Patent application 526,740: Fluidized Bed Coal Liquefaction; filed August 26, 1983
Patent application 526,832: Fluidized Bed Liquefaction of Biomass; filed August 26, 1983
Patent application 526,768: Fluidized Bed Desulfurization; filed August 26, 1983
Patent application 526,750: High Temperature Acoustic Levitator; filed August 26, 1983
Patent application 526,741: Visual Accommodation Transfer-Tester; filed August 26, 1983
Patent application 526,755: Hot Melt Recharge System; filed August 26, 1983
Patent application 526,754: Containerless High Purity Pulling Process and Apparatus for Glass Fibers; filed August 26, 1983
Patent application 527,613: Memory Metal Actuator; filed August 26, 1983
Patent application 529,803: Automatic Oscillator Frequency Control System; filed September 6, 1983
Patent application 530,339: Sequentially Deployable Maneuverable Tetrahedral Beam; filed September 8, 1983
Patent application 530,185: Wide Dynamic Range Video Camera; filed September 8, 1983
Patent application 532,342: Dual Towline Spin-Recovery Device; filed September 15, 1983
Patent application 537,614: Hybrid Power Semiconductor Switch; filed September 30, 1983
Patent application 537,616: Corrosion Resistant Coating; filed September 30, 1983
Patent application 537,615: A Multistage Spent Particle Collector and a Method for Making Same; filed September 30, 1983
Patent application 538,063: Apparatus for Adapting an End Effector Device Remotely Controlled Manipulator Arm; filed September 30, 1983
Patent application 539,230: Mechanical Fastener; filed October 7, 1983
Patent application 542,232: Laser Activated MTOS Microwave Device; filed October 14, 1983
Patent application 547,175: Method and Apparatus For Minimizing Convection During Crystal Growth From Solution; filed October 31, 1983
Patent application 547,171: Fluidized Bed Gasification of Biomas to Methane; filed October 31, 1983
Patent application 548,582: Cryogenic Insulation Strength and Bond Tester; filed November 3, 1983
Patent application 550,681: Geometires For Roughness Shapes in Laminar Flow; filed November 10, 1983
Patent application 551,536: High Dynamic Global Positioning System Receiver; filed November 14, 1983
Patent application 553,339: Vinyl Styrylpyridines and Their Copolymerization with Bismaleimide Resins; filed November 18, 1983
Patent application 556,513: Maser Cavity Servo-Tuning Systems; filed November 30, 1983
Patent application 556,514: Discharge Cell for Optogalvanic Spectroscopy Having Orthogonal Relationship Between the Probe Laser and Discharge Axis; filed November 30, 1983
Patent application 556,481: Optical Multiple Sample Vacuum Integrating Sphere; filed November 30, 1983
Patent application 559,988: Gravity Enchanced Acoustic Levitation Method and Apparatus; filed December 9, 1983
Patent application 561,433: Vibrating-Chamber Levitation Systems; filed December 14, 1983
Patent application 561,432: Propulsion Apparatus and Method Using Boil-Off Gas from a Cryogenic Liquid; filed December 14, 1983
Patent application 561,702: Amine Terminated Bisaspartimides Process for Preparation Thereof, and Polymers Thereof; filed December 15, 1983
Patent application 561,431: Chemical Approach for Controlling Nadimide Cure Temperature and Rate; filed December 14, 1983
Patent application 561,429: Chemical Approach for Controlling Nadimide Cure Temperature and Rate; filed December 14, 1983
Patent application 561,435: Chemical Approach for Controlling Nadimide Cure Temperature and Rate; filed December 14, 1983
Patent application 561,434: Chemical Approach for Controlling Nadimide Cure Temperature and Rate; filed December 14, 1983
Patent application 565,482: Process for Preparing Phthalocyanine Polymers; filed December 22, 1983
Patent application 565,481: Simulator Scene Display Evaluation Device; filed December 22, 1983

Dated: February 21, 1984.

John E. O'Brien,
Deputy General Counsel.

[FR Doc. 84-5479 Filed 2-29-84; 8:45 am]
BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-155]

Consumers Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-6 issued to Consumers Power Company (the licensee) for operation of the Big Rock Point Plant located in Charlevoix County, Michigan.

The amendment would place lower, more restrictive limits on the allowable concentration of radioactive iodine in the reactor coolant than currently exist. Presently the Technical Specifications place a limit of 35 microcuries per milliliter on the maximum concentration of halogens in the reactor coolant. The proposed amendment would institute a two-tier limit on the concentration of dose equivalent Iodine-131 in the reactor coolant. The lower tier limit would be 0.2 microcuries per milliliter. Concentrations above the lower tier limit would require increased surveillance (more frequent sampling). The upper tier limit would be 4.0 microcuries per milliliter. Concentrations in excess of the upper tier limit would require additional action to reduce the concentration and shutdown in a matter of hours if the concentration could not be appropriately lowered. The proposed amendment is described in the licensee's application dated December 16, 1983.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14671, April 6, 1983). One of the examples of actions involving no significant hazards considerations relates to an amendment which constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications; for example, a more restrictive surveillance requirement. The proposed amendment would place a more restrictive limit (a lower limit than the present limit) on the maximum allowable concentration of radioactive iodine in the reactor coolant. The lower concentration would reduce the amount of radioactive material that could be released in the event of an accident such as a loss of coolant. Therefore, the proposed amendment would constitute an additional restriction as described in the example.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By April 3, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later that fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisifies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing a requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by the date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 [in Missouri (800) 342-6700]. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Dennis M. Crutchfield: petitioner's name and telephone number; data petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Judd L. Bacon, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended positions,

supplemental petitions and/or request for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720.

Dated at Bethesda, Maryland, this 22 day of February 1984.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 84-5602 Filed 2-29-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-6 issued to Consumers Power Company (the licensee) for operation of the Big Rock Point Plant located in Charlevoix County, Michigan.

The amendment would approve Technical Specification changes which would incorporate a description of and operating requirements for the new Stack Gas Monitoring System into the Technical Specifications. This system has been installed and made operational to meet the guidance of NUREG-0737, Item II.F.1 (1) and (2), "Additional Accident Monitoring Instrumentation (Noble Gas Effluent Monitor and Sampling and Analysis of Plant Effluents)." This system provides the capability to monitor effluent release rates several orders of magnitude above normal rates for accident situations. These changes are in accordance with the licensee's application dated December 15, 1981, as revised December 16, 1983.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14671, April 6, 1983). One of the examples of actions involving no significant hazards considerations relates to changes that constitute an additional limitation, restriction, or control not presently included in the Technical Specifications. The Stack Gas Monitoring System is a new system at Big Rock Point which will replace and upgrade the present effluent monitoring system. The new system was designed to meet the guidance of NUREG-0737, Item II.F.1 (1) and (2), which is described above. The proposed changes incorporate a description of the system and operating requirements for the system into the Big Rock Point Technical Specifications and; therefore, constitute an additional limitation.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By April 3, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 [in Missouri (800) 342-6700]. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Dennis M. Crutchfield: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Judd L. Bacon, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended positions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and / or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720.

Dated at Bethesda, Maryland, this 22 day of February 1984.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 84-5603 Filed 2-29-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co. (Turkey Point Plant, Unit Nos. 3 and 4); Order Confirming Licensee Commitments on Emergency Response Capability

I

Florida Power and Light Company (the licensee) is the holder of Facility Operating License Nos. DPR-31 and DPR-41 which authorize the operation of the Turkey Point Plant, Unit Nos. 3 and 4 (the facilities) at steady-state power levels not in excess of 2200 megawatts thermal. The facilities are pressurized water reactors (PWRs) located in Dade County, Florida.

II

Following the accident at Three Mile Island No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and intergration of emergency response activities including training.

III

Florida Power and Light Company (FPL) responded to Generic Letter 82-33 by letter dated April 15, 1983. By letters dated May 5, May 20, July 25, 1983, January 30, 1984 and February 14, 1984, FPL modified several dates as a result of negotiations with the NRC staff. In these submittals, FPL made commitments to complete the basic requirements. The attached Table summarizing FPL's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by FPL.

FPL's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotated and confirmed by a subsequent order.

The NRC staff reviewed FPL's April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. As a result of these negotiations, the licensee modified certain dates by letters dated May 5, May 20, July 25, 1983, January 30, 1984 and February 14, 1984. The NRC

staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of FPL's commitments is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to Sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immedately, that the licensee shall: Implement the specific items described in the Attachment to this ORDER in the manner described in FPL's submittals noted in Section III herein no later than the dates in the Attachment.

Exentions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the Federal Register. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this Order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 23rd day of February 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT I TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC	May 1, 1984.
	1b. SPDS fully operational and operators trained	Unit 3, May 31, 1985, unit 4, Dec. 31, 1985.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Do.
3. Regulatory Guide 1.97—Application to Emergency	3a. Submit a report to the NRC describing how the requirements of Supplement I to NUREG-0737 have been or will be met.	Do.
	3b. Implement (installation or upgrade) requirements	Complete schedules for implementation provided.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Oct. 31, 1984.
	4b. Implement the upgraded EOPs	Dec. 31, 1985.
5. Emergency Response Facilities [1]	5a. Technical Support Center fully functional	Complete.
	5b. Operational Support Center fully functional	Do.
	5c. Emergency Operations Facility fully functional	Do.

[1] The licensee's completion schedule (Status) does not include additions or changes resulting from RG 1.97. The schedule for implementing any additions or changes required by RG 1.97 will be provided Mar. 1, 1984.

[FR Doc. 84-5604 Filed 2-29-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-285]

Omaha Public Power District, (Fort Calhoun Station, Unit No. 1); Order Confirming Licensee Commitments on Emergency Response Capability

Omaha Public Power District (the licensee or OPPD) is the holder of Facility Operating License No. DPR-40 which authorizes the operation of the Fort Calhoun Station, Unit No. 1 (the facility) at steady-state power levels not in excess of 1500 megawatts thermal. The facility is a pressurized water reactor (PWR) located in Washington County, Nebraska.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

OPPD responded to Generic Letter 82-33 by letter dated April 15, 1983. In this submittal, OPPD made commitments to complete the basic requirements. The attached Table summarizing OPPD's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by OPPD.

OPPD's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed OPPD's April 15, 1983 letter and finds that the proposed dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of OPPD's commitments is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to Sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensees shall: Implement the specific items described in the Attachment to this Order in the manner described in OPPD's submittal noted in Section III herein no later than the dates in the Attachment.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the Federal Register. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this Order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 22nd day of February, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Regulatory Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC	Complete.
	1b. SPDS fully operational and operators trained	1985 Refueling Outage estimated to end Nov. 30, 1985.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Apr. 1, 1985.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	Do.
	3b. Implement (installation or upgrade) requirements	The licensee will provide this date in its Apr. 1, 1985 report.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Mar. 1, 1985.
	4b. Implement the upgraded EOPs	1985 Refueling Outage estimated to end Nov. 30, 1985.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	1985 Refueling Outage estimated to end Nov. 30, 1985.
	5b. Operational Support Center fully functional	Complete.
	5c. Emergency Operations Facility fully functional	1985 Refueling Outage estimated to end Nov. 30, 1985.[1]

[1] These facilities are functional at this time with the exception of the data acquisition and radiological assessment to be provided by the Emergency Response Facilities Computer System. Data acquisition and radiological assessment is presently provided by voice communication and manual calculations.

[FR Doc. 84-5605 Filed 2-29-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-344]

Portland General Electric Co., the City of Eugene, Oregon, Pacific Power & Light Co. (Trojan Nuclear Plant); Revision To Order Dated March 14, 1983

I

Portland General Electric Company, *et al.* (the licensee or PGE) is the holder of Facility Operating License No. NPF-1 which authorizes the operation of the Trojan Nuclear Plant (the facility) at steady-state power levels not in excess of 3411 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Columbia County, Oregon.

II

On March 14, 1983, the Nuclear Regulatory Commission (the Commission) issued an Order, published in the Federal Register on March 25, 1983 (48 FR 12613), which confirmed licensee commitments to take actions on post-TMI requirements set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." The Order required, among other things, that NUREG-0737 items II.F.1.1 (noble gas effluent monitors) and II.F.1.2 (effluent monitoring of iodine) be fully completed by December 31, 1983.

By letters dated November 29 and December 29, 1983, the licensee requested that the completion date for these items be revised and exteneded until startup from the Trojan 1984 refueling (start of Fuel Cycle 7), which will commence on or about August 1, 1984.

In its letters cited above, the licensee explained the difficulties it was encountering in meeting the schedule called for in the march 14th Order. Our evaluation is presented below.

The licensee is implementing II.F.1.1 and II.F.1.2 by installing new Process and Effluent Radiological Monitors (PRM) for the Containment (PRM-1), the Auxiliary Building (PRM-2), and the condenser air ejector (PRM-6). The new equipment was received on a staggered schedule between may and September 1983. This is approximately 18 months after the original date specified. Licensee installed the new equipment as received in an attempt to meet the

implementation deadline. However, the new equipment could not be made operational because the technical manual was received late (November 16, 1983) and there are problems with some calibration data in the technical manual. These must be resolved before the licensee disconnects the existing monitors and connects the new monitors. Calibration, operating and maintenance procedures must be in place and personnel adequately trained on the new equipment before it is placed in service. There was inadequate time to accomplish these activities before December 31, 1983.

Spare parts for the new monitors have not yet arrived. It would therefore be preferable to keep the existing monitors in service until spare parts are received.

Licensee in continuing efforts to complete implementation. Best efforts will be made to connect PRM-2 and PRM-6 sooner (February-March 1984) than the requested revised completion date if the above problems can be resolved.

Since the plant will shut down for refueling about May 1, 1984, the request involves a relatively small extension of time (4 months). NRC-approved interim measures will remain in effect until the new monitors are fully operational.

Based on the above, we find that: (1) The licensee has made a responsible effort to implement the NUREG-0737 requirements noted; (2) there is good cause for the delay; and (3) as noted above, interim compensatory measures have been provided.

III

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered that:

Attachment 1 of the Commission's March 14, 1983, Order is revised to extend the completion date for Items II.F.1.1 and II.F.1.2 from December 31, 1983 to startup from the 1984 refueling outage.

The Order of March 14, 1983, except as revised herein, remains in effect in accordance with its terms.

IV

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the Federal Register. Any request for hearing must be submitted to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A Copy of the request shall be sent to the Executive Legal Director at the same address.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

This Order shall become effective upon the licensee's consent or upon expiration of the period within which the licensee may request a hearing or, if a hearing is requested by the licensee, on the date specified in an Order issued following further proceedings on this Order.

Dated at Bethesda, Maryland this 21st day of February, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-5509 Filed 2-29-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Co. and Old Dominion Electric Coop., North Anna Power Station, Unit Nos. 1 and 2; Exemption

I

The Virginia Electric and Power Company and Old Dominion Electric Cooperative (the licensees) are the holders of Facility Operating License Nos. NPF-4 and NPF-7 which authorize operation of North Anna Power Station, Units No. 1 and No. 2. These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facilities comprise two pressurized water reactors at the licensee's site located in Louisa County, Virginia.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appencix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections, III.G., is the subject of this exemption request. III.G specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3). By letter dated October 31, 1983, the licensee requested an exemption from the requirements of Section III.G.3b to the extent that it requires the installation of a fixed fire suppression system in the control room of Units 1 and 2. In support of this request, the licensee notes that installed hose standpipes provide the best possible fire suppression for these areas and the installation of an automatic fire suppression system in these areas would not enhance fire protection safety above that provided and may be detrimental to overall facility safety.

III

We have reviewed and evaluated the licensee's exemption request. The control room is bounded on all sides by concrete which provides a three hour rated fire barrier. Openings into the room are protected by fire doors, dampers and fire rated penetration seals. The control room is a continuously occupied space that houses controls and instruments necessary to remotely operate valves, pumps, motors, etc., required to operate the plant under both normal and abnormal conditions. Most of these controls and instruments are mounted on centrally located panels. Ionization type fire detectors are located throughout the control room. No automatic fire suppression capability is provided for the main control room areas. However, portable fire extinguishers and standpipe hose stations are available for use throughout the control room. In addition, should the control room become uninhabitable due to smoke or heat, an alternative shutdown capability exists which is independent of the control room area.

Plant Technical Specifications require that the control room be continously manned by operations personnel. Most of these personnel are trained members of the fire brigade. Therefore, these personnel constitute a continuous fire watch which would be alerted by the early warning fire detectors. We find that fuel load in the area (for fire) is low. Manual suppression, should a fire occur, would be prompt and effective. Based on the above, we find that a fixed suppression system would not enhance the fire protection system in the North Anna Power Station, Units No. 1 and No. 2, control room area.

Therefore, based on our evaluation, we conclude that the installation of a fixed fire suppression system will not significantly enhance the level of fire

protection in the Unit No. 1 and Unit No. 2 control room area, and therefore the exemption requested by the licensee should be granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or common defense and security and is otherwise in the public interest and hereby grants an exemption from the requirements of Section III.G.3b of Appendix R to 10 CFR Part 50 to the extent that it requires the installation of a fixed fire suppression system in the control room at the North Anna Power Station, Units No. 1 and No. 2.

The NRC staff has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 23rd day of February, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-5607 Filed 2-29-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-508]

Washington Public Power Supply System, et al.; Extension of Comment Period for the Draft Environmental Statement for Washington Nuclear Project No. 3

The Nuclear Regulatory Commission noticed on January 20, 1984 (49 FR 2566) the availability of the Draft Environmental Statement for Washington Nuclear Project No. 3 (WNP-3) for public comment. The Statement (NUREG-1033) relates to proposed operation of the WNP-3 located in Grays Harbor County, Washington. The NRC is hereby extending the comment period for this report until March 12, 1984, in order to be consistent with the review period stated in the notice issued by the Environmental Protection Agency (49 FR 3523).

Dated at Bethesda, Maryland, this 24th day of February, 1984.

For the Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 84-5603 Filed 2-29-84; 8:45 am]

BILLING CODE 7590-01-M

Policy Statement on Regionalization

Introduction and Background

In the U.S. Nuclear Regulatory Commission Policy Statement on Regionalization published in the Federal Register on March 25, 1983 (48 FR 12619), the Commission sought public comment on initiatives that would enlarge the role of its regional offices in implementing national programs in the areas of selected licensing and support functions that historically have been centralized in NRC's headquarters organizations. The oral and written comments that were received during public meetings or in response to the Federal Register notice have been considered. This revision of the March 25, 1983 Policy Statement on Regionalization contains the following major changes:

1. Regionalization is essentially complete except for a pilot program of certain technical reviews of operating reactor license amendments. The Commission will review the pilot program at the end of 2 years and decide if such technical reviews should continue to be conducted in the regions.

2. Licensing authority and NRR project managers will not be transferred to the regions except that limited licensing authority and the project manager for Fort St. Vrain will remain in Region IV;

3. Nonpower reactor licensing will not be decentralized; and

4. License fee management will not be decentralized.

For several years, NRC has conducted various pilot programs to decentralize regulatory activities on a limited basis. Examples of such programs include selected materials licensing, reactor operator licensing, emergency planning, state liaison, and some operating reactor licensing actions. These pilot programs appear to have been successful.

A 2-year pilot program to decentralize selected selected materials licensing activities was conducted in Region III from March 1978 to March 1980. The overall experience of this pilot program has been good. It has provided better coordination between the materials licensing staff and the regional inspectors and has provided better services to applicants and licensees.

Goals

As a result of these pilot programs and the recognition that NRC could improve the quality of regulation, the Commission developed in October 1981, basic policy goals for enlarging the role of NRC regional offices in regulatory activities beyond the scope of the pilot programs. The Commission's decision was intended to:

- Improve its coordination of licensing, inspection and enforcement activities at each facility
- Baring NRC nearer to state and local governments and the public by formalizing the role of regional offices to represent NRC in their regions
- Strengthen incident response capability by delegating certain responsibilities and authorities to the regions
- Upgrade the position of the NRC Regional Director

The goals associated with decentralizing certain headquarters regulatory activities have been achieved.

Implementation

To enlarge the role of regional offices, NRC first reorganized the Office of Inspection and Enforcement, transferred its five regional offices to direct control of the Executive Director for Operations (EDO), and upgraded the position of Regional Director to that of Regional Administrator. The position of Deputy Executive Director for Regional Operations and Generic Requirements (DEDROGR) was created simultaneously. In addition to his function as Chairman of the Committee To Review Generic Requirements (CRGR) the DEDROGR provides support to the EDO in implementing the EDO's managerial and supervisory responsibility for the regions.

Early in 1982, headquarters and regional offices developed planning assumptions and began to identify regulatory activities that could be decentralized. The planning assumptions centered on whether national regulatory programs could be more effective in serving the public and the regulated industry if some activities were implemented at the regional level.

Pilot programs for both materials licensing and reactor operator licensing have been implemented in some regions in recent years. Licensing activities for several categories of nuclear materials licenses were transferred from headquarters to Regions I and III in 1982 and to Regions II, IV and V in 1983. The authority to issue licenses to reactor operators was delegated to Regions II

and III in 1982 and to Regions I, IV and V in 1983. Two-hundred and sixty operating reactor technical reviews were transferred to the regions in 1982. In 1983, approximately 100 operating reactor technical reviews were transferred to the regions. In October 1982, NRC opened a Denver Field Office in Region IV that is responsible for uranium recovery licensing. In December 1982, limited authority for certain licensing actions for the Fort St. Vrain reactor was delegated to Region IV.

The process that has been called regionalization is essentially complete. Detailed schedules documenting what was accomplished are included in the Table.

During fiscal year 1984 (FY 84), the technical review of 280 licensing actions for operating power reactors are planned to be done in the regions. A 2-year pilot program, limited to two operating power plants in each of three regions, will be implemented to test the method of selecting licensing action for technical review in the regions. The technical reviews transferred to the regions as part of this pilot program will comprise a portion of the total number of technical reviews that will be done in the regions. The regions will perform technical reviews and safety evaluations for these licensing actions. The Office of Nuclear Reactor Regulation (NRR) will select which technical reviews are sent to the regions, will retain licensing authority, and will continue to issue all license amendments and Safety Evaluation Reports for the reactors in the pilot program as well as reactors not in the pilot program. The following are benefits that are expected to be derived from the pilot program:

- Regionalization of the technical reviews would enable closer coordination between inspection and licensing activities and better communication with the licensees which, in turn, should produce more effective licensing and inspection programs.
- Regionalization of the technical reviews would enhance safety where on site physical inspection is preferred or where first hand knowledge of plant operations is an advantage.

An audit program will be developed to measure the success of the pilot program. Quantitative criteria to be examined might include time to complete reviews, number of review hours expended, inventory reduction per fiscal year, and number of appeals. Qualitative criteria might include uniformity of program application and results among the regions, enhanced incident response capability, quality of work products and efficiency of interoffice communications. Preferably quantitative criteria, but at least qualitative criteria, will be developed to judge the effect of regional technical reviews on safety. The Commission will review the results of the pilot program at the end of 2 years. Licensing for nonpower test, research and training reactors will be retained in NRR.

Management

NRC management controls have changed as decentralization has proceeded. In accordance with the Energy Reorganization Act of 1974, the responsibility for the licensing programs is assigned to the directors of NRC program offices. This responsibility will not be transferred, but the authority to implement certain licensing activities has been delegated to Regional Administrators. The headquarters program offices will remain responsible for their overall programs, will continue to establish broad, uniform policies and guidance based on Commission and EDO direction, and will audit regional activities to assure consistent implementation of policy guidance and consistency in interpreting NRC requirements. If decision at the regional level appear to be inconsistent in the application of regulatory requirements, licensees may appeal them through the program offices. These appeal procedures have been developed and will be implemented following approval by the Commission.

It is essential that the Commission maintain effective program oversight to ensure consistency among regions. As such, the regions are agents of the headquarters offices for implementing a variety of agency programs. For example, IE historically has established policy, defined the inspection and enforcement programs, and monitored their implementation in the regions. Likewise, for licensing activities that have been transferred to the regions the program offices will retain responsibility for policy formulation, program development, and control of implementation. The Commission through the EDO intends to ensure consistency in regional operations through the following mechanisms:

- Periodic management meetings with the Commission
- Quarterly management meetings of the EDO, Office Directors, and Regional Administrators
- Frequent meetings of Regional Division Directors, Branch Chiefs and working level personnel with counterpart headquarters staff on a wide variety of issues
- Weekly conference calls with the DEDROGR, Office Directors, and Regional Administrators
- Development of Commission policy guidance
- Development of procedures and implementation of instructions to the regions
- Development of operating plans for each region

In addition to establishing programs and policies and performing program oversight for the activities delegated to the regions, the NRC program offices continue to perform regulatory functions which require a qualified technical staff in headquarters. The headquarters offices will continue to perform high level waste repository systems licensing and for reactors all the safety, environmental and antitrust reviews of applications for Construction Permits (CP), Operating Licenses (OL), Standard Plants design approval and topical report approval. The NRC headquarters offices also continue to perform the activities associated with safety improvements. These include the resolution of Unresolved Safety Issues (USIs) and other generic issues, generic studies, the performance of risk and reliability assessments, and the systematic assessments of reactor operating experience. The development and approval of new regulatory requirements and modification of existing requirements resulting from the safety improvement efforts or other efforts continue to be the responsibility of the headquarters offices. Relative to licensing actions associated with operating reactors, NRC headquarters issues all license amendments and retains the project manger except for Fort St. Vrain, where project manger and limited authority to issue license amendments have been transferred to Region IV. In addition, headquarters offices will be responsible for implementing certain generic licensing actions (e.g., requirements associated with pressurized thermal shock and steam generator tube integrity) on all reactors to which they apply.

FOR FURTHER INFORMATION CONTACT: Edward B. Blackwood, Executive Coordinator for Regional Operations, Office of the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (301/492-4359).

Dated at Washington, D.C. this 27th day of February 1984.

For the Nuclear Regulatory Commission.
Samuel J. Chilk,
Secretary of the Commission.

TABLE OF ACCOMPLISHMENTS

Function (headquarters' office)	Fiscal year 1982	Fiscal year 1983	Fiscal year 1984
1. Operating reactor licensing technical reviews (NRR)[a]	260, all regions	100, all regions	[b]280, all regions.
2. Licensing authority for operating power reactors (NRR)		Region IV: 1 reactor	Region IV: 1 reactor.
3. Administer reactor operator license examinations and issue licenses (NRR)[c]		All regions	All regions.
4 Authority to issue Uranium mill tailings licenses (NMSS)		Region IV	Region IV.
5. Authority to issue materials license (NMSS)	5 types of high volume licenses, Region I, III.	5 types of high volume licenses, all regions.	10 types of high volume licenses, all regions.
6. Review safeguards license amendments which do not decrease effectiveness for reactors and SNM facilities (NMSS).		Regions I, II	All regions.
7. Conduct transportation route surveys and review contingency plans for spent fuel and category 1 SNM shipments (NMSS)[d].			Region III.
8. Perform closeout surveys and terminations of uranium fuel fabricaton licenses (NMSS)		All regions	All regions.
9. Maintain oversight of 10 CFR 70 licenses for advanced fuel (Pu) plants that have initiated decontamination and decommissioning activities (NMSS).		All regions	All regions.
10. Issue proposed civil penalties with IE concurrence (IE)	All regions	All regions	All regions.
11. Issue orders and make 10 CFR 2.206 decisions consistent with the transfer of licensing authority from IE, NRR, and NMSS for Fort St. Vrain and Uranium Mills (IE, NRR, and NMSS).		Region IV	Region IV.
12. Review license amendments of emergency plans for operating reactors		All regions	All regions.
13. Observe and appraise the annual emergency preparedness exercises for operating reactors. (IE)	All regions	All regions	All regions.
14. Provide legal assistance to Regional Administrators (ELD)	All regions	All regions	All regions.
15. Provide State agreement officer (SP)	Regions II, IV	Regions I, II, IV, V	Regions I, II, IV, V.
16. Continue State liaison functions	All regions	All regions	All regions.
17. Perform budget formulation/execution and management information reporting activities	All regions	All regions	All regions.
18. Perform various administrative support services		All regions	All regions.

[a] NRR issues the license amendments. The regions conduct certain technical reviews.
[b] Will continue in fiscal year 1985 with a similar number of technical reviews.
[c] NRR will provide for contract examiner assistance.
[d] All regions by fiscal year 1985.

[FR Doc. 84-5609 Filed 2-29-84; 8:45 am]
BILLING CODE 7590-01-M

POSTAL SERVICE

Change of Handling for Second-Class Mail

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: Beginning March 1, 1984, the Postal Service will begin to handle all second-class mail in the surface preferential network, instead of handling some in the surface preferential network and some in the Bulk Mail Center network, as it now does. This will enable the Postal Service to realize efficiencies in transportation and distribution in the surface preferential network and simultaneously to relieve the pressure on the Bulk Mail Centers due to heavy and growing volumes of mail.

EFFECTIVE DATE: March 1, 1984.

FOR FURTHER INFORMATION CONTACT: Donald D. Dillman, (202) 245-5187.

SUPPLEMENTARY INFORMATION: At present, two distribution and transportation networks are used for second-class mail. So-called "ordinary" second-class mail is handled through the Bulk Mail Center network, while so-called "newspaper treatment" second-class mail is handled via the surface preferential mail network.

In response to changing demands on postal operations, the Postal Service has decided to implement the following operational changes. Effective March 1, 1984, all second-class mail may be entered in the surface preferential mail network. By January 1, 1985, it is anticipated that no second-class mail will be distributed through the Bulk Mail Centers.

The Postal Service recognizes that this handling change will require some adjustments on the part of second-class mailers who now enter their mail in the Bulk Mail Center transportation network, as well as on the part of the Postal Service. For this reason, the period from March 1, 1984, to January 1, 1985, will be considered a transition period, during which time second-class mailings will continue to be accepted at the Bulk Mail Centers. However, mailers are encouraged to work with their post office of mailing in making the adjustment to surface preferential requirements as quickly as they can, so that the Postal Service can begin to realize the advantages of this handling change.

The Postal Service emphasizes that it expects to implement this handling change with no appreciable effect on its costs and with no effect on the service now provided newspaper treatment publications.

All second-class mail will be distributed on the same schedule as First-Class Mail to meet surface preferential standards, and will be delivered on the first scheduled delivery trip following receipt, provided that no First-Class Mail is delayed.

The Postal Service recognizes that from time to time exceptional circumstances may occur, such as abnormal weather conditions or unpredictable volumes of mail. In those instances, preference will be given to publications with more frequent issuance. This will ensure that service to publications entitled to newspaper treatment will not be impaired while publications currently being entered in the Bulk Mail Center transportation network are being absorbed into the surface preferential network.

Mailers who wish to ascertain what changes they may have to make in their operations should get in touch with their local postal officials.

W. Allen Sanders,
Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-5563 Filed 2-29-84; 8:45 am]
BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 13786; 812-5745]

Carnegie-Cappiello Growth Trust, et al.; Application

February 24, 1984.

Notice is hereby given that Carnegie-Cappiello Growth Trust ("Growth Trust"), 1331 Euclid Avenue, Cleveland, Ohio 44115 and Carnegie Government Securities Trust ("Government Trust") (together, "Funds"), registered under the Investment Company Act of 1940 ("Act") as open-end, diversified management investment companies, and Carnegie Fund Distributors, Inc. ("Distributors", and together with Funds "Applicants"), distributor for the continuous offering of shares of Growth Trust, and for the shares of Government Trust (Intermediate Term Series) ("Intermediate Series"), filed an application on January 9, 1984, for an order of the Commission pursuant to Section 11(a) of the Act approving, to the extent necessary, certain proposed offers of exchange, and pursuant to Section 6(c) of the Act exempting Applicants to the extent necessary from the provisions of Section 22(d) of the Act to permit such offers of exchange. 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 the applicable statutory provisions.

Applicants represent that Growth Trust commenced an initial public offering of its shares on December 9, 1983. Government Trust offers shares of beneficial interest in two series, one of which is the Intermediate Series, and the other of which is the Money Market Series. Applicants state that each series is composed of a separate portfolio, managed in accordance with the separate investment objectives and policies of that series. The Money Market Series does not charge a sales load on the sale of its shares.

Applicants state that Distributors is the principal underwriter of shares of Intermediate Series, and that such shares are sold on a continuous basis at their net asset value, plus a sales charge as follows:

Amount of purchase	Sales charge as a percentage of the offering price (percent)
Less than $25,000	1.000
$25,000 to $49,999	.80
$50,000 to $99,999	.75
$100,000 to $249,999	.50
$250,000 to $999,999	.25
$1,000,000 or more	.125

Applicants further state that it is contemplated that Growth Trust will commence a continuous offering of its shares approximately 30 days after the closing date of its initial public offering. Distributors will serve as Growth Trust's principal underwriter during such continuous offering, and Growth Trust shares will be sold at net asset value plus a sales charge as follows:

	Sales charge as a percentage of the offering price (percent)
Less than $25,000	6.0
$25,000 or more but less than $50,000	5.5
$50,000 or more but less than $100,000	4.5
$100,000 or more but less than $250,000	3.5
$250,000 or more but less than $500,000	2.0
$500,000 and over	1.0

Applicants propose to offer to exchange shares of the Intermediate Series for shares of Growth Trust at their relative net asset values per share, plus a sales charge equal to the difference between the sales charge previously paid on the shares of Intermediate Series and the sales charge applicable to shares of Growth Trust. Conversely, shareholders exchanging shares of Growth Trust for shares of Intermediate Series could do so at their respective net asset values per share, without paying the applicable sales charge.

Applicants further that any sales charges payable on the proposed exchanges would be received by Distributors and that a portion thereof may be reallowed to dealers entering into dealer agreements with Distributors. It is stated that Distributors does not intend to solicit exchanges but will notify dealers, following the issuance of the orders requested by Applicants, that the proposed exchange privileges are available. The exchange privileges will also be described in the effective prospectuses of the Growth Trust and Intermediate Series, Applicants state. In the event Applicants decide to terminate the proposed exchange privileges, no notice thereof would be provided to sharesholders of Growth Trust or Intermediate Series, other than through the next subsequent effective prospectus of each Fund.

Applicants state that, absent an order, the proposed exchange offers would violate Section 11 of the Act since they would be at other than net asset value and might be deemed to violate Section 22(d) since investors would be able to purchase shares of the Funds at a sales charge other than that described in their prospectuses (i.e. the actual sales charge will depend on the amount of the sales charge previously paid by each individual investor).

In support of the exemptions requested, Applicants asset that the proposed offers of exchange would be fair and equitable to investors in the Funds, and would also afford such investors a desirable flexibility in their financial planning. Accordingly, it is stated, the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 20, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-5010 Filed 2-29-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23231; 70-6906]

Middle South Utilities, Inc. and Middle South Energy, Inc.; Supplemental Notice of Proposed Common Stock Sales to Parent Holding Company.

February 24, 1984.

Middle South Utilities, Inc. ("MSU"), a registered holding company, and Middle South Energy, Inc. ("MSE"), 225 Baronne Street, New Orleans, Louisiana 70112, a wholly-owned subsidiary of MSU, have filed a post-effective amendment to the application-declaration in this proceeding with this Commission pursuant to sections 6(a), 7, 9(a), 10, and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 43 promulgated under the Act.

MSE is authorized by its articles of incorporation to issue up to one million shares of common stock, no par value. By order dated November 15, 1983 (HCAR No. 23117,) the Commission authorized MSE to issue and sell up to 25,000 shares to MSU through December 31, 1984, at a price of $1,000 per share. As of January 26, 1984, 13,300 shares of the 1984 common stock had been issued, raising to 691,900 the total number of shares sold by MSE to MSU.

The companies now state that, based upon MSE's revised estimate of cash requirements, in addition to the 11,700 authorized shares yet to be sold, MSE may need to sell an additional 100,000 shares (at $1,000 per share) to MSU through December 31, 1984. The proceeds of such sales will be used for general corporate purposes including costs incurred by MSE in the construction of its Grand Gulf nuclear-fired generating facility in Mississippi. Sales will be timed to concide with MSE's cash needs with respect to the Grand Gulf project.

The amended application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 19, 1984 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the amended application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-5530 Filed 2-29-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20695; File No. SR-Amex-84-4]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc.; Relating to the Expanded Use of the "Spread Priority Rule" by Options Specialists

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 February 14, 1984, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the interpretation of Rule 950(d), concerning the priority of bids and offers applicable to options orders, to permit specialists to fully utilize the "spread priority rule" to facilitate the execution of spread, straddle and combination orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to expand the use of the "spread priority rule" by specialists, which is expected to enhance spread market depth and liquidity. The spread priority rule permits one leg of a spread, straddle or combination order to be executed at the established bid or offer (thus, taking priority over such bid or offer), so long as the other leg is simultaneously executed at a price which is better than the established bid or offer for such other series. It should be noted that such priority is only available when one member executes both legs of a spread, straddle or combination order with a single, member on the other side of the trade. Therefore, the granting of limited priority with respect to one leg of such orders does not result in shutting out orders on the specialist book or in the trading crowd, since such orders would not have been executed anyway. Thus, the spread priority rule enhances the spread market without adversely affecting the regular options market.

Exchange Rule 155 requires a specialist to give precedence to stock orders entrusted to him/her as agent before the specialist buys or sells the same stock at the same price as principal. Rule 950 made this rule applicable to options at the inception of options trading. Subsequently, spread, straddle and combination orders were introduced as new types of orders followed by the adoption of the spread priority rule. At that time, Rule 155 was interpreted as prohibiting a specialist from participating in a spread transaction using the spread priority rule if the specialist holds a customer order for either of the series at a price equal to the execution price of either leg of the spread transaction.

The Exchange believes that additional specialist participation in filling spread, straddle and combination orders will increase the likelihood of execution of such orders and will enhance spread market depth and liquidity without adversely affecting the market for individual option series. This new interpretation of the rule would not eliminate the specialist's obligation to give precedence to book orders under Rule 155, but would recognize the fact that spread, straddle and combination orders are unique orders, the execution of which does not adversely affect orders on the specialist's book and thus is not in conflict with the specialist's agency responsibilities. It should be noted that all other members can and do use the spread priority rule (i.e., a broker holding a spread order and an order for an individual series at a price equal to one leg of that spread may use the spread priority rule for his/her spread

order to go ahead of the order for the individual series).

The proposed changes are consistent with the requirements of the Securities Exchange Act of 1934 (the "1934 Act") and rules and regulations thereunder applicable to the Exchange in that they are expected to facilitate the execution of spread, straddle and combination orders which should enhance spread market depth and liquidity.

Therefore, the proposed rule changes are consistent with Section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors, composed of Exchange members and representatives of member firms, endorsed the proposed rule change.

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respects 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 inspections 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 within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 23, 1984.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-5015 Filed 2-29-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20584; File No. SR-BSE-83-15]

Self-Regulatory Organization; Proposed Change; Boston Stock Exchange, Inc.; Relating to the Revised Fees and Dues of the Boston Stock Exchange, Inc.

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 January 4, 1984, the Boston Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed change as described in Item 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 proposed amendment to the existing fee structure of the Boston Stock Exchange are the elimination of the current 15% surcharge and continuation of the present ITS usage fee of $.005 per share on non-Boston executions which would otherwise expire on December 31, 1983.

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. The text of these statements may be examined at the place specified in Item IV. The self-regualtory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regualtory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed rule change provides for the elimination of the current 15% surcharge on Exchange fees as part of an ongoing effort to reduce transaction charges to members. Continuation of the ITS usage charge is for the purpose of recovering the cost of certain equipment and related expenses incurred for in the cause of trading via the ITS system.

(b) Implementation of the proposed fee revisions is consistent under the provisions of the Securities Exchange Act of 1934, because it is a reduction applied uniformly to all members and therefore a fair and equitable allocation to members.

(B) Self-Regualtory Organizaiton's Statement on Burden on Competition

The Exchange does not believe the proposed fee revisions impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were solicited from members on November 30, 1983. None were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed change, or

(B) Institute preceedings 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, 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 in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 23, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-5531 Filed 2-29-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20694; File No. SR-CBOE-84-05]

Self-Regulatory Organizations; Proposed Rule Change; Chicago Board Options Exchange, Inc.; Relating to Position Limits On Broad-Based Stock Index Options

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 February 6, 1984, the Chicago Board Options Exchange, Incorporated 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. Text of the Proposed Rule Change

Additions are in italics; deletions are bracketed.

Position Limits

24.4(a) In determining compliance with Rule 4.11, option contracts on a market index shall be subject to a contract limitation fixed by the Board, which shall not be larger than *50,000 contracts on the same side of the market.* [The equivalent of a $300 million position. For this purpose a position shall be determined by the product of the current index value times the index multiplier times the number of contracts on the same side of the market.]

(b) and (c) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Experience has confirmed that there is little, if any, need for position and exercise limits on broad-based, cash-settlement index option contracts. The potential for manipulation is remote because of the large number of underlying securities composing such indexes, none of which are a significant percentage of the index. A limit of 50,000 contracts is proposed as a first step toward elimination of position and exercise limits. The reason for changing from a dollar value to a number of contracts is to eliminate the lowering of position and exercise limits when the value of a market index increases. The statutory basis for this proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934 (the Act), in that the change will facilitate trading in market indexes.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change creates any burden on competition that is not necessary or appropriate under the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 at 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 within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-5528 Filed 2-29-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20691; File No. SR-NYSE-84-4]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating To Trading Individual Stock Options on NASDAQ/NMS Tier 1 Stocks

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 February 8, 1984, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items

have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the rules of the Exchange to permit it to list options on stocks designated as "National Market System ("NMS") Securities" under section (b)(i) of SEC Rule 11Aa2-1 ("NASDAQ/NMS Tier 1 Stocks"). Transactions on the Exchange in individual stock options on NASDAQ/NMS Tier 1 stocks ("individual OTC-stock options") will be governed by the Exchange's 700 series rules, the rules of the Exchange that currently apply to options on "Broad" index stock groups and options on "industry" index stock groups ("industry index options") and that are proposed to apply to individual stock options on listed stocks ("individual listed-stock options"). Because the Exchange's pending filing regarding individual listed-stock options and its recently-approved filing regarding industry index options amend the Exchange's option rules to take into account individual stock options and relevant aspects of over-the-counter trading, the task remaining to convert the Exchange's options rules to apply to individual OTC-stock options is quite modest: Rule 715 need only be amended to add to the criteria for individual stock options references to the criteria for NASDAQ/NMS Tier 1 Stocks.

The proposed rule change also specifies, as to those contract terms not set forth in the 700 series rules, contract terms for the Exchange's individual OTC-stock options. They are identical to the specifications proposed for its individual listed-stock options.

The Exchange will apply two sets of criteria in selecting stocks to underlie individual OTC-stock options. First, each stock must qualify as a NASDAQ/NMS Tier 1 security.[1] Second, the Exchange will apply the standards that it proposes to apply in listing individual listed-stock options.[2] Since each set of criteria contains issuer and market criteria, the combination of the two sets will assure that the Exchange trades individual OTC-stock options only on the most widely held and most actively traded OTC-stocks.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose*—The general purpose of the proposed rule change is to provide for Exchange trading of individual stock options on NASDAQ/NMS Tier 1 stocks. In the proposed rule change, the Exchange makes clear that the filing is not intended to imply that the Exchange has reached a determination that the trading of such options is consistent with investor protection or the public interest, and notes that the Commission also has made no such determination.

The particular purposes of the changes of substance included in the proposed rule change are summarized in the Exchange's response to Item I.

(2) *Statutory Basis*—The statutory basis for the proposed rule change is section 6(b)(5) of the 1934 Act in that the trading of individual OTC-stock options will serve investors by enabling them to hedge against risks associated with the ownership of NASDAQ/NMS Tier 1 stocks.

In addition, the proposed rule change relates to section 6(b)(1) of the 1934 Act in that it will provide a regulatory framework for a market on the Floor in individual OTC-stock options. The proposed rule change will give the Exchange the capacity to carry out the purposes of the 1934 Act, to comply with the provisions of the 1934 Act, the rules and regulations thereunder and the rules of the Exchange, and to enforce compliance therewith by members, Options Trading Right ("OTR") holders, and persons associated with members and OTR holders.

Except for the changes necessary or appropriate to accommodate the trading of individual OTC-stock options on the Floor, the Exchange's present options rules apply to the Exchange's proposed market in individual OTC-stock options. Those options rules in turn generally apply the Exchange's equity and bond rules, and hence the bases and policies underlying those rules, to Exchange-traded options. Thus, the proposed rule change contemplates the application to Exchange trading of individual OTC-stock options of long-established regulatory principles and techniques that are designed to assure the fairness, orderliness and quality of the Exchange's stock and bond markets.

In particular, the proposed rule change would apply to individual OTC-stock options rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest in connection with transactions in individual OTC-stock options, all as required by section 6(b)(5) of the 1934 Act. The Exchange believes that its proposed market for individual OTC-stock options will be consistent with the standards of section 6(b)(5), since the Exchange expects such a market to provide increased investment flexibility with respect to NASDAQ/NMS Tier 1 stocks similar to that provided by the options markets on other national securities exchanges with respect to Exchange-listed stocks. Consequently, the Exchange believes that if the Commission determines that trading of individual OTC-stock options is intrinsically consistent with the public interest, the public interest will be advanced by Exchange trading of those options.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition. The proposed rule change will further competition by placing the Exchange in the same position to provide a market for trading individual OTC-stock options, in the event the Commission permits trading of such options in any market, as the other self-regulatory organizations that have filed similar rule changes with the Commission.

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[1] The minimum requirements for NASDAQ/NMS Tier 1 stocks include (A) issuer criteria of net tangible assets of $2.0 million and capital and surplus of $1.0 million and (B) market criteria of 500,000 publicly held shares, market value of publicly held shares (outstanding shares times price per share) of $5.0 million, market price of $10 per share, average monthly trading volume of 600,000 shares for the preceding six months and at least four market makers.

[2] Absent exceptional circumstances, the individual listed-stock option standards include (A) market criteria of trading volume of 2.4 million shares in the preceding twelve months, 7.0 million publicly held shares, a market price of $10 per share and 6000 shareholders and (B) an issuer criterion of aggregate consolidated net income of $1.0 million during the preceding eight quarters.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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.[3] 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 within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 23, 1984.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-5532 Filed 2-29-84; 8:45 am]

BILLING CODE 8010-01-M

[3] The Commission expects to solicit comments on the specific issues raised by the exchange proposals to trade options on over-the-counter securities in the context of its anticipated proposal to amend Rule 12a-6 under the Act. Such a rule amendment would be a necessary precondition to approval of this proposal, as well as similar ones previously filed by the Chicago Board Options Exchange, Incorporated (*see* Securities Exchange Act Release No. 20471, December 9, 1983, 48 FR 55939, December 16, 1983); the American Stock Exchange, Inc. (*see* Securities Exchange Act Release No. 20498, December 16, 1983, 48 FR 56871, December 23, 1983), the Pacific Stock Exchange, Inc. (*see* Securities Exchange Act Release No. 20538, January 6, 1984, 49 FR 1808, January 13, 1984); and the Philadelphia Stock Exchange, Inc. (*see* Securities Exchange Act Release No. 20690, February 23, 1984). In addition, the Commission expects to solicit comment on these issues in the context of other self-regulatory organization initiatives involving options on over-the-counter securities. *See* File No. SR-NASD-80-10.

[Release No. 34-20690; File No. SR-Phlx-83-27]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc.; Relating To Approval of Underlying Securities

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 January 5, 1984, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I.II and III below, which Items have been prepared by the self-regulatory organization. The commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of Proposed Rule Change

Approval of Underlying Stocks

Rule 1009

(a) (i)-(iv) No change;

(b) Underlying securities shall be (i) duly listed or registered on a national securities exchange *or (ii) designated as national market system securities pursuant to Tier 1 Criteria;* and

(c) No change;

(d) No change.

. . . Commentary

No change.

II. Self-Regulatory Organization's Statement of the Terms of Substance of 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 and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to increase the number of equity securities which may underly options contracts. At this time, underlying securities are limited to those listed and registered on a national securities exchange. This proposal would permit listing of options on over-the-counter securities which have been designated as national market system securities pursuant to Tier 1 Criteria. *See* Rule 11A2-1 under the Securities Exchange Act of 1934. In all other respects the listing standards will remain the same.

Options are derivative products. To trade options, it is essential to have accurate and up-to-date last sale and quotation information about the underlying security. The current listing standards preclude listing options on OTC stocks because, at the time the standards were promulgated, last sale and quotation information on OTC stocks was inadequate to support options trading. This rule change recognizes developments that have occurred in the OTC market since that time.

Specifically, as part of the development of the national market system, the Commission has developed a statutory scheme in which OTC securities having active trading markets and widespread investor interest are designated "national market system securities." The primary effect of designation as national market system security is the requirement that transactions be reported in a real-time system and that quotations be firm as to quoted price and size. Current listing standards which preclude the listing of exchange traded options on OTC securities are no longer necessary and deprive investors in options on OTC stocks of the benefits of exchange traded instruments.

Under this proposal, to be an underlying security for options trading OTC stocks would have to meet the Tier 1 Criteria as well as the standards for securities underlying options trading. These standards require, in general, a minimum of 7,000,000 publicly held shares, 6,000 shareholders, trading volume of at least 2,400,000 shares for the last 12 months, and a minimum price per share of $10 for the last three months. *See* PHLX Rule 1009.

Rule 12a-6 under the Act exempts securities underlying options from the

operation of Section 12(a) of the Act if, among other things, the underlying security is listed and registered on a national securities exchange. Rule 12a-6 was adopted when exchange options were first traded, and the PHLX requests the Commission to amend the rule to include Tier 1 Securities.

The statutory basis for the rule change is Section 6(b)(5) of the Securities Exchange Act of 1934. This proposal will bring to investors the benefit of listed options trading on securities traded in the OTC market.

(B) Self Regulatory Organization's Statement on Burden on Competition

This proposal will not impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.[1] 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 within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 23, 1984.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-5529 Filed 2-29-84; 8:45 am]

BILLING CODE 8010-01-M

[1] The Commission expects to solicit comments on the specific issues raised by the exchange proposals to trade options on over-the-counter securities in the context of its anticipated proposal to amend Rule 12a-6 under the Act. Such a rule amendment would be a necessary precondition to approval of this proposal, as well as similar ones previously filed by the Chicago Board Options Exchange, Incorporated (*see* Securities Exchange Act Release No. 20471, December 9, 1983, 48 FR 55939, December 16, 1983); the American Stock Exchange, Inc. (*see* Securities Exchange Act Release No. 20493, December 16, 1983 48 FR 56871, December 23, 1983); the Pacific Stock Exchange, Inc. (*see* Securities Exchange Act Release No. 20538, January 6, 1984, 49 FR 1808, January 13, 1984); and the New York Stock Exchange, Inc. (*see* Securities Exchange Act Release No. 20691, February 23, 1984). In addition, the Commission expects to solicit comment on these issues in the context of other self-regulatory organization initiatives involving options on over-the-counter securities. *See* File No. SR-NASD-80-10.

[Release No. 34-20696; File No. SR-PHLX 84-1]

Self-Regulatory Organization; Proposed Rule Change by Philadelphia Stock Exchange, Inc.; Relating to Listing of Options on the French Franc

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 February 8, 1984, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX") proposes to trade options on the French franc. ("FF"). The FF contract will be traded pursuant to PHLX rules which govern the trading of foreign currency options FF specifications will be as follows:

(Brackets indicate deletions; italics indicate additions.)

Contract Size—125,000 FF = $14,500
Strike Price Intervals—½ cent
Premium Quotations—cents per unit currency
.001=$1.25
.010=$12.50
.100=$125.00
1.000=$1250.00
(strikes would be 110, 115, 120)
Minimum Premium—.005 set unit of currency or $6.25 per contract (same as British pound)
Bid/Offer Differentials
.200 or less=.020=$25.00
.201 to .800=.040=$50.00
more than .800=.060=$75.00

In order to list options on the FF, it is necessary to amend PHLX Rules as follows:

1000(b)(13)
1000(b)(15)
1009(d)
1014(c)(ii)
1033(b)(ii)
1034(ii)

Rule 1000 Applicability, Definitions and References:

(a) No change.

(b) 1 through 12—No change.

(b)(13) Foreign Currency—The term "foreign currency" means the standard unit of the official medium of exchange of a sovereign government other than the United States Government (e.g., the British pound, the German mark, the Swiss franc, the Canadian dollar, *the French franc,* or the Japanese yen.

(b)(14) No change.

(b)(15) Unit of Underlying Foreign Currency—The term "unit of underlying foreign currency" means a single unit of the foreign currency which the Options Clearing Corporation shall be obligated to sell (in the case of a call option) or purchase (in the case of a put option) upon the valid exercise of a foreign currency option contract (e.g., one British pound, one German mark, one Swiss franc, one Canadian dollar, *one French franc,* or one Japanese yen).

* * * * *

Rule 1009 Approval of Underlying Stocks or Underlying Foreign Currencies:

(a) No change.

(b) No change.

(c) No. change.

(d) The British pound, the German mark, the Swiss franc, the Canadian dollar, *the French franc,* and the Japanese yen each may be approved as an underlying foreign currency for options transactions by the Exchange, subject to any approval criteria the Exchange may deem necessary or

appropriate in the interests of maintaining a fair and orderly market or for the protection of investors. In the event that any of the sovereign governments issuing any of the above-mentioned currencies should issue a new currency intended to replace one of the above-mentioned currencies as the standard unit of the official medium of exchange of such government, such new currency also may be approved as an underlying foreign currency for options transactions by the Exchange, subject to any approval criteria the Exchange may deem necessary or appropriate in the interests of maintaining a fair and orderly market or for the protection of investors, and options trading in such new currency may occur simultaneously with options trading in any of the above-mentioned currencies; provided, however, that the Exchange shall withdraw its approval of options transactions in the currency which is intended to be replaced by such new currency as expeditiously as it deems consistent with the maintenance of a fair and orderly market for the protection of investors.

Rule 1014 Obligations and Restriction's Applicable to Specialist's and Registered Options Traders:

(a) No change.

(b) No change.

(c)(i) No change.

(c)(ii) Options on Foreign Currencies—In the case of option contracts on the British pound, bidding and/or offering so as to create differences of no more than $.0020 between the bid and the offer for each option contract for which the bid is $.0200 or less, no more than $.0040 where the bid is more than $.0200 but does not exceed $.0800, and no more than $.0060 where the bid is more than $.0800.

In the case of option contracts on the German mark and in the case of option contracts on the Swiss franc, bidding and/or offering so as to create differences of no more than $.0004 between the bid and the offer for each option contract for which the bid is $.0040 or less, no more than $.0005 where the bid is more than $.0040 but does not exceed $.0160, and no more than $.0006 where the bid is more than $.0160.

In the case of option contracts on the Canadian dollar, bidding and/or offering so as to create differences of not more than $.0004 between the bid and the offer for each option contract for which the bid is $.0050 or less, no more than $.0005 where the bid is more than $.0050 but does not exceed $.0200, and no more than $.0006 where the bid is more than $.0200.

In the case of option contracts on the French franc, bidding and/or offering so as to create differences of no more than $.0002 between the bid and the offer for each option contract for which the bid is $.0020 or less, no more than $.00040 where the bid is more than $.0020 but does not exceed $.0080 and no more than $.0006 where the bid is more than $.0080.

In the case of option contracts on the Japanese yen, bidding and/or offering so as to create differences of no more than $.000004 between the bid and the offer for each option contract for which the bid is $.000040 or less, no more than $.000005 where the bid is more than $.000040 but does not exceed $.000160, and no more than $.000006 where the bid is more than $.000160.

The Exchange may establish, however, differences other than the above for one or more series of classes of foreign currency options. The bid-ask differentials as stated above shall apply to all but the longest term series of foreign currency options open for trading in each class. For these series, the bid-ask differentials shall be twice those stated above.

* * * * *

Rule 1033 Bids and Offers—Premium:

(a) No change.

(b)(i) No change.

(b)(ii) In the case of options on foreign currencies, in terms of dollars per unit of the underlying foreign currency. However, the first two decimal places shall be omitted from all bid and offer quotations for the British pound, the German mark, the Swiss franc, [and] the Canadian dollar, *and the French franc,* and the first four decimal places shall be omitted from all bid and offer quotations for the Japanese yen (e.g., a bid of ".88" for an option contract on the German mark shall represent a bid to pay $.0088 per unit of underlying foreign currency—i.e., a premium of $550—for an option contract having a unit of trading of 62,500 marks; a bid of "9.2" for an option contract on the British pound shall represent a bid to pay $.0920 per unit of underlying foreign currency—i.e., a premium of $1,150—for an option contract having a unit of trading of 12,500 pounds; *a bid of ".52" for an option contract on the French franc shall represent a bid to pay .0052 per unit of underlying foreign currency—i.e., a premium of $650.—for an option contract having a unit of trading of 125,000. francs;* and a bid of "1.6" for an option contract on the Japanese yen shall represent a bid to pay $.000160 per unit of underlying foreign currency—i.e., a premium of $2,000—for an option contract having a unit of trading of 6,250,000 yen.

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Rule 1034 Minimum Fractional Changes:

(i) No change.

(ii) In the case of options on foreign currencies, $.0005 for option contracts on the British pound, $.0001 for option contracts on the German mark, $.0001 for option contracts on the Swiss franc, $.0001 for option contracts on the Canadian dollar, $.000005 for option contracts on the French franc and $.000001 for option contracts on the Japanese yen.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The proposed rule change is filed in order to permit the PHLX to list options on the FF. Like the other currencies subject to options trading on PHLX, the French franc accounts for a major portion of the interbank foreign exchange market turnover,[1] is subject to futures trading on an U.S. exchange, is issued by a country with substantial trade relations with the U.S., and is not pegged to a fixed rate of exchange vis a vis the U.S. dollar. Also like other currency options traded on PHLX, the FF contract will have units of trading equal to one-half of foreign currency futures contract sizes.

The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 ("Act") in that it will facilitate transactions in

[1] In April 1983, the FF accounted for 4.4% of the foreign exchange turnover reported by banking institutions and 5.7% of foreign exchange turnover reported by brokers. See "Summary of Results of U.S. Foreign Exchange Market Turnover conducted in April 1983 by the Federal Reserve Bank of New York."

securities and protect investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received.

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 approved 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. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 23, 1984.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-5914 Filed 2-29-84; 8:45 am]

BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

Matching Program to Identify Registration Violators

AGENCY: Selective Service System.

ACTION: Notice.

SUMMARY: Pursuant to OMB Memorandum dated May 11, 1982, "Revised Supplemental Guidance for Conducting Matching Programs", the Selective Service System publishes the following information concerning revision of the Selective Service System Registration Compliance Program for computerized matching of individual records maintained by the Selective Service System against records of other federal and non-federal sources. This revision of the report published in 47 FR 55445 (December 9, 1982) incorporates additional sources of records of registration age men.

FOR FURTHER INFORMATION CONTACT: Lawrence Roffee, Management Services, Selective Service System, Washington, D.C. 20435, Phone 202-724-0372.

Dated: February 24, 1984.

Thomas K. Turnage,

Director of Selective Service.

Report concerning SSS Matching Program to Identify Registration Violators Purusant to OMB Memorandum dated May 11, 1982, concerning "Revised Supplemental Guidance for Conducting Matching Programs", the Selective Service System submits the following information concerning its revision to the Selective Service System Registration Compliance Program for computerized matching of individual records maintained by the Selective Service System against the records of the Social Security Administration, the Internal Revenue Service, the Defense Logistics Agency, the United States Coast Guard, the Veterans Administration, the Immigration and Naturalization Service, State and Local Government agencies, commercial enterprises, and private individuals.

Authority: The authority under which this program is conducted are sections 10(b)(5) and 12(e) of the Military Selective Service Act (50 U.S.C. App. 451 et seq.); and Presidential Proclamation 4771, 45 FR 45247 (July 3, 1980).

Purpose: This matching program is a continuing program to identify those persons who are in violation of the registration requirements of section 3 of the Military Selective Service Act (50 U.S.C. App. 453).

Procedure: The matching procedure for the program includes the following steps:

(1) The Social Security Administration, State and local government agencies, Veterans Administration, Department of Defense, Immigration and Naturalization Service, and commercial mailing list firms provide the Selective Service System the following information as available: the name, social security account number, date of birth, and address of each male born in the year of birth of the age groups which are required to register.

(2) The data received from the various record sources is compared to the Selective Service Registrant Registration Record (SSS-10) to eliminate those men who have registered. Pending further matching and confirmation, the names on the lists that are not matched with the Selective Service record of registrants constitute the Selective Service Suspected Violator Inventory System (SSS-8) containing the names of suspected violators.

(3) The Selective Service Suspected Violator Inventory System (SSS-8) is then compared to the record systems of the Defense Logistics Agency and the U.S. Coast Guard containing the names of personnel on active duty with the armed forces. The names of persons who are on active duty with the armed forces are removed from the Suspected Violator Inventory System.

(4) Letters and registration forms are mailed to individuals in the Selective Service Suspected Violator Inventory System. Records not containing addresses may then be matched by Internal Revenue Service to their Individual Master File (IRS-24.030) to determine the most current addresses. (Authority: 26 U.S.C. 6103(i)(2)) The Internal Revenue Service then mails letters and registration forms to the individuals.

(5) Those who respond by registering are entered into the Selective Service Registrant Record System (SSS-10). Those who fail to respond or refuse to register are reported to the Department of Justice for further investigation and possible prosecution. Those who respond but are determined to be exempt from registration pursuant to sections 3(a) and 6(a)(1) and (2) of the Military Selective Service Act (50 U.S.C. App. 453, 456) are so identified.

Record Systems: The record systems that are matched against the SSS-8 are:

(1) Selective Service System Record System No. SSS-10 "Registrant Registration Records (post-1979) SSS" published in 45 FR 30587 (May 8, 1980);

(2) Social Security Administration Record System No. 09-60-0058 "Master Files of Social Security Number Holders HHS SSA OEER" published in 46 FR 53784 (October 30, 1981);

(3) Internal Revenue Service Record System NO. IRS 24.030 "Individual Master File (IMF)" published in 46 FR 16463 (March 12, 1981);

(4) U.S. Coast Guard, Record System No. DOT/CG 624 "Personnel Management Information System (PMIS)" published in 46 FR 59741 (December 7, 1981);

(5) U.S. Coast Guard, Record System No. DOT/CG 678 "Reserve Personnel Management Information System (Automated)" published in 46 FR 59741 (December 7, 1981);

(6) Defense Logistics Agency Record System No. S 322.10 DLA-LZ "Defense Manpower Data Center Data Base" published in 46 FR 40556 (August 10, 1981);

(7) Veterans Administration Record System No. 45VA23 "Veterans Assistance Discharge System (VADS)-VA" published in 47 FR 370 (January 5, 1982);

(8) Immigration and Naturalization Service Record System No. 001 "Immigration and Naturalization Service Index System" published in 42 FR 54337 (October 5, 1977);

(9) State and local government records; and

(10) Lists acquired from private concerns and individuals.

Start and End Dates: The matching program began June 1, 1982. The program will continue indefinitely unless registration under the Military Selective Service Act is terminated by the President or by statute.

Safeguards: Safeguards afforded the records involved are:

(1) Records are available to authorized Selective Service personnel only. Authorized personnel include the Director, Deputy Director, Associate Director for Operations, Associate Director for Management Services, the General Counsel, computer operators involved in processing the information, and other personnel specifically authorized to have access to the information by the Director, the Deputy Director, the Associate Directors or the General Counsel to have access to the information.

(2) Computer files are maintained at the Joint Computer Center at Great Lakes, Illinois.

(3) Building is secured and patrolled after normal business hours.

(4) Security guards for the building allow access to authorized personnel only.

(5) Computer room is secured with cypher locks.

(6) Terminal access to the computer system is restricted to those with valid user ID and password.

(7) A Customer Information Control System requires an additional password for interactive access to data base information.

(8) A software security package protects access to data in the system.

Disposition of records: At the completion of the program for each year group, source records are returned to source agencies by registration year group, if requested; or destroyed pursuant to any prior agreement between the Selective Service System and any respective source agency; or disposed of pursuant to Chapters 21 and 33 of the Federal Records Act of 1950 (44 U.S.C. 2101 et seq.).

Congressional Notice: Copies of this report are sent concurrently with publication to the Congress, addressed to the President of the Senate and the Speaker of the House of Representatives.

[FR Doc. 84-5559 Filed 2-29-84; 8:45 am]

BILLING CODE 8015-01-M

SMALL BUSINESS ADMINISTRATION

[Designation of Disaster Loan Area No. 614600]

Oklahoma; Designation of Disaster Loan Area

Cherokee County in the State of Oklahoma constitute a disaster area because of a freeze which occurred on December 25, 1983, through January 3, 1984, and from January 10, 1984, through January 25, 1984. Eligible small businesses may file applications for economic injury assistance until the close of business on November 23, 1984, at the address listed below: U.S. Small Business Administration, 200 NW. 5th Street, Suite 670, Federal Building, Oklahoma City, Oklahoma 73102, or other locally announced locations.

The interest rate for eligible applicants is 8%.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 23, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-5630 Filed 2-29-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 3025; Amt. No. 4]

Texas; Declaration of Physical Disaster Loan Area Pursuant to Pub. L. 98-166

The above numbered declaration (48 FR 55798, Amendments No. 1—48 FR 57396 and No. 2—49 FR 5016) is amended pursuant to the Secretary of Agriculture's designation authorizing Farmers Home Administration (FmHA) to accept emergency loan applications in the following area:

STATE OF TEXAS

FmHA		Incident and date	Counties
Number	Date		
SO32	2-01-84	Losses sustained by drought beginning May 1, 1983; and continuing through November 30, 1983; and * also an early freeze in September 1983; and * * In addition to the drought an early freeze in September 1983 and a hailstorm on May 20, 1983, in Randall County, * * * In Floyd County, losses due to drought from May 1, 1983, through September 1983; and an early freeze in September 1983; * * * * In Taylor County, losses due to drought beginning May 1, 1983 through November 30, 1983, and a tornado on September 15, 1983.	Comanche, Dickens, Donely, Eastland, Fisher, Foard, Hockley, Jones, Kent, Menard, Mills, Motley, Potter, San Saba, Scurry, Swisher, Tom Green, * Briscoe, * Crosby, and * Dallam, * * Randall, * * * Floyd, and * * * * Taylor counties.

As a result of this designation, I have determined the above counties in the state of Texas constitute a disaster loan area for agricultural enterprises which are ineligible for disaster assistance from the FmHA because of alien status; corporations, partnerships and cooperatives not being primarily engaged in farming; farm owners who do not operate their farms; etc., and for Economic Injury Disaster loans for non-farm small business concerns.

The interest rates for eligible applicants under this designation are as follows:

	Percent
Agricultural Enterprises With Credit Available Elsewhere	10.5

	Percent
Agricultural Enterprises Without Credit Available Elsewhere	8.0
Non-farm Small Business (Economic Injury)	8.0

Loan applications for Physical Disaster Loans from eligible agricultural enterprises may be filed for a period not to exceed thirty days from the date of the letter of referral from FmHA, provided that the application for EM assistance from FmHA or the formal written request for a letter of referral by FmHA was filed within the time limits set forth in the FmHA designation. Loan applications for Economic Injury for non-farm small businesses may be filed until the close of business on August 1, 1984.

The number assigned this disaster is 3025 for Physical damage to eligible agricultural enterprises and for Economic Injury 605801. Eligible enterprises may file applications for loans for physical damage or economic injury at: U.S. Small Business Administration, Area 3 Disaster Office, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051, (800) 527-7735 and in Texas (800) 442-7206, or other locally announced locations.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: February 23, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-5629 Filed 2-29-84; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council; Meeting

The Small Business Administration, Region V Advisory Council, located in the geographical area of Illinois, will hold a public meeting at 9:00 a.m. on Wednesday, April 4, 1984, at the Dirksen Federal Building, 219 S. Dearborn Street, Room 280, Chicago, Illinois, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call John L. Smith, District Director, U.S. Small Business Administration, 219 S. Dearborn Street, Room 437, Chicago, Illinois, (312) 353-4508.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 24, 1984.

[FR Doc. 84-5627 Filed 2-29-84; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Dallas, will hold a public meeting at 9:00 a.m. on Friday, May 4, 1984 in the Loews Anatole Hotel, 2201 Stemmons Freeway, Dallas, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James S. Reed, District Director, U.S. Small Business Administration, 1100 Commerce Street, Room 3C36, Dallas, Texas, 75242—(214) 767-0600.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 23, 1984.

[FR Doc. 84-5628 Filed 2-29-84; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council; Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Omaha, Nebraska, will hold a public meeting from 10:00 a.m., to 2:30 p.m., on Monday, March 26, 1984, at the Omaha Club, 20th and Douglas, Omaha, Nebraska, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, please write or call Rick Budd, District Director, U.S. Small Business Administration, 19th and Farnam, Omaha, Nebraska, 68102; phone (402) 221-4691.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 23, 1984.

[FR Doc. 84-5625 Filed 2-29-84; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council; Meeting

The Small Business Administration, Region VIII Advisory Council, located in the geographical area of Sioux Falls, South Dakota, will hold a public meeting on Thursday, April 26, 1984, from 9:00 a.m. to 3:00 p.m., at the Community Room, First National Bank in Sioux Falls, 100 South Phillips, Sioux Falls, South Dakota 57102, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Chester B. Leedom, District Director, U.S. Small Business Administration, Suite 101, Securities Building, 101 South Main, Sioux Falls, South Dakota 57102, 605/336-2980, Ext. 231.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 24, 1984.

[FR Doc. 84-5623 Filed 2-29-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/718]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State will hold a meeting of the Working Group on Transborder Data Flows (TBDF) of the Advisory Committee on International Investment, Technology, and Development on Thursday, March 22, 1984 from 10:00 a.m. to noon. The meeting will be held in the Loy Henderson Conference Room, Department of State, 2201 C. Street, NW., Washington, D.C.

An agenda for the meeting will include reports on OECD meetings and discussion of the U.S. study for the UN Center for Transnational Corporations.

Members of the public wishing to attend the meeting must contact Mr. Lincoln's office (202-632-2728) in order to arrange admittance to the State Department. Please use the "C" Street entrance.

The Chairman of the Committee will, as time permits, entertain oral comments from members of the public attending the meeting.

Dated: February 23, 1984.

Philip T. Lincoln, Jr.,

Executive Secretary.

[FR Doc. 84-5623 Filed 2-29-84; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/717]

Fine Arts Committee; Meeting

The Fine Arts Committee of the Department of State will meet on Saturday, March 17, 1984 at 10 a.m. in the John Quincy Adams State Drawing Room. The meeting will last approximately until 11:30 a.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting in June 1983, the announcement of all gifts, loans, and financial contributions in calendar year 1983, as well as a report on the redesigned Martin Van Buren Dining Rooms. There will be a general discussion on the next

two important stages of architectural improvements.

Public access to the Department of State is controlled. Members of the public wishing to take part in the meeting should telephone (202) 632-0298 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: February 14, 1984.

Clement E. Conger,

Chairman, Fine Arts Committee.

[FR Doc. 84-5554 Filed 2-29-84; 8:45 am]

BILLING CODE 4710-38-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 84-009]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership in the Towing Safety Advisory Committee (TSAC). This committee advises the Secretary of Transportation on rulemaking matters related to shallow draft inland and coastal waterway navigation and towing safety.

Eight members will be appointed as follows: Five (5) members from the barge and towing industry, reflecting a geographical balance; two (2) members from the general public; and one (1) member from port districts, authorities, or terminal operators.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. The committee will meet at least once a year in Washington, D.C. or another location selected by the Coast Guard.

DATE: Requests for applications should be received no later than 16 April 1984, and must be completed and returned to the Coast Guard no later than 1 June 1984.

ADDRESS: Persons interested in applying should write to Commandant (G-CMC/44), U.S. Coast Guard Headquarters, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Captain C. M. Holland, Executive Secretary, Towing Safety Advisory Committee (G-CMC), Room 4402, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593 (202) 426-1477.

C. M. Holland,

Captain, Coast Guard, Executive Secretary, Marine Safety Council.

[FR Doc. 84-5538 Filed 2-29-84; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Advisory Circular; Use of Alternate Grades of Aviation Gasoline for Grade 80/87; Availability and Request for Comments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft Advisory Circular (AC) Availability and Request for Comments.

SUMMARY: This AC, which proposes to revise AC No. 91-33 dated October 6, 1971, provides information relating to the use of alternate grades of gasoline when Grade 80/87 aviation gasoline is not available.

DATE: Commenters must identify File AC 91-33A; Subject: Use of Alternate Grades of Aviation Gasoline for Grade 80/87. Comments must be received by March 30, 1984.

ADDRESS: Send all comments on the draft AC to: Federal Aviation Administration, Aircraft Certification Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Mr. George Mulcahy, Engine and Propeller Standards Staff, ANE-110, Aircraft Certification Division, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7330.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this draft AC by writing to: Federal Aviation Administration, Aircraft Certification Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

Background

Aviation gasoline demand has decreased steadily to a relatively insignificant portion of the total oil market. Escalating production costs and other factors have caused the oil industry to improve its economics by providing a single grade of aviation gasoline, Grade 100 low lead (100LL), which would be suitable for most current and projected piston aircraft engines. As a result, Grade 80 aviation gasoline has become increasingly difficult to obtain and this situation is expected to become more critical in the near future. The shortage, and perhaps eventual disappearance, of Grade 80 aviation gasoline affects those reciprocating engines which were originally certificated on 80/87 octane or lower grade fuel. The attached AC provides information relating to the use of alternate grades of gasoline when Grade 80/87 aviation gasoline is not available and to the resultant effects of the use of alternate fuels which have higher TEL (tetraethyl lead) content. This Circular also provides suggestions for added safety in the use of automotive gasoline in those aircraft engines and aircraft approved to use automotive gasoline. This AC revises AC No. 91-33 dated October 6, 1971.

Comments Invited

Interested parties are invited to submit comments on the draft AC. The draft AC and comments received may be inspected at the office of the Aircraft Certification Division, Engine and Propeller Standards Staff (ANE-110), Room 408, 12 New England Executive Park, Burlington, Massachusetts, between the hours of 8:00 a.m. and 4:30 p.m. on weekdays, except Federal holidays.

Issued in Burlington, Massachusetts, on February 17, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84-5434 Filed 2-29-84; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on March 16, 1984, in the RTCA Conference Room, One Farragut Square, 1425 K Street NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Approval of Minutes of Meeting Held on January 20, 1984; (2) Chairman's Report on RTCA Administration and Activities; (3) Special Committee Activities Report for January and February, 1984; (4) Consideration of Establishing New Special Committees; (5) Selection of Assistant Director, Technical Services; and (6) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain

information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005, (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on February 21, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 84-5488 Filed 2-29-84; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 136—Installation of Emergency Locator Transmitters (ELT) in Aircraft, Subcommittee on Battery Problems; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of Special Committee 136, Subcommittee on Emergency Locator Transmitter Battery Problems, to be held on March 28-30, 1984, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC, commencing at 1:00 p.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Second Meeting Held October 13-14, 1983; (3) Consideration of Proposed Changes to the Subcommittee Report on ELT Batteries; and (4) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, D.C. 20005, (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on February 23, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 84-5489 Filed 2-29-84; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Baltimore County, Maryland

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Baltimore County, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Edward A. Terry, Jr., District Engineer, Federal Highway Administration, The Rotunda—Suite 220, 711 West 40th Street, Baltimore, Maryland 21211-2187, Telephone: (301) 962-4010, and/or Mr. William F. Schneider, Jr., Chief, Bureau of Project Planning, Maryland State Highway Administration, 300 West Preston Street, Baltimore, Maryland 21203, Telephone: (301) 659-1130.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Maryland State Highway Administration will prepare an Environmental Impact Statement (EIS) on a proposal to construct Maryland Route 43 extended in Baltimore County, Maryland. The proposed improvements would involve the construction of Maryland Route 43 from west of U.S. Route 1 to I-95, a distance of approximately 3 to 5 miles, depending on the alternate. In addition, improvements will be studied along U.S. Route 1 (Bel Air Road) from I-695 to north of Silver Spring Road. The purpose of this project is to ensure that sufficient roadway capacity will be available to adequately provide for the traffic growth in the new development areas of White Marsh and Perry Hall.

Alternatives under consideration include: (1) Taking no action, and (2) and (3) construction of a 4 to 6 lane divided highway from west of U.S. Route 1, with a potential connection to I-695 (Baltimore Beltway), to I-95 on the east. Various options are being considered. Taking no action and two (2) build alternatives (widening to 6 or 7 lanes) are being considered for U.S. Route 1, an existing 4 lane highway.

Informal scoping has already commenced with the public and State and Federal agencies. No formal scoping meeting is planned at this time. A public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To insure that the full range of issues related to this proposal are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

(Catalog of Federal Domestic Assistance Program Number 20.025, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on: February 23, 1984.

Emil Elinsky,

Division Administrator, Baltimore, Maryland.

[FR Doc. 84-5374 Filed 2-29-84; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Denial of Petition To Commence Defect Proceeding

This notice sets forth the reasons for the denial of a petition to commence a proceeding to determine whether to issue an order pursuant to section 152(b) of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1412(b).

On August 11, 1983, CW2 Dan R. Jacobs of Fort Ord, California, petitioned for an investigation of a possible safety-related defect in his 1979 Chrysler LeBaron passenger car, specifically, wandering and play in the steering wheel. Mr. Jacobs reported that the steering gear had been replaced at 6,000 miles, and again at 45,000 miles.

The National Highway Traffic Safety Administration (NHTSA) reviewed its records and found only one complaint from approximately 125,000 owners of such cars. No accidents or injuries related to the problem have been reported. The problem reported by the petitioner appears to be one related to vehicle maintenance. The nature of the problem is such that the vehicle operator is warned of the condition, and that it should receive attention.

NHTSA concluded that there was no reasonable possibility that an order of the nature requested would be issued at the conclusion of an investigation, and denied the petition on January 6, 1984.

(Secs. 124, 152, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1410a, 1412); delegations of authority of 49 CFR 1.50 and 501.8)

Issued on February 17, 1984.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 84-5375 Filed 2-29-84; 8:45 am]

BILLING CODE 4910-59-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on the third of April 1984 at 1:00 p.m. the Chicago Station Committee on

Educational Allowances shall at 536 South Clark Street, Chicago, Illinois, Room 508 reconvene a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Olive Harvey College, 10001 South Woodlawn, Chicago, Illinois 60628 should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: February 23, 1984.

Grady W. Horton,

Director, VA Regional Office.

[FR Doc. 84-5553 Filed 2-29-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 42
Thursday, March 1, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD

The CAB will meet.

[M-401 2/23/84]

TIME AND DATE: 10:00 a.m., March 1, 1984.

PLACE: Room 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of Items Adopted by Notation.
2. Docket 41608, Draft final rule to alter the Passenger Origin-Destination Survey by (1) reducing the number of fare basis codes and (2) extending the reporting requirement until sunset. (Memo 1946-A, OC, BDA, BIA, OEA, OCCCA, BCAA, OGC)
3. Docket 41686, Advance Notice of Proposed Rulemaking—Airline Computer Reservations Systems. (OGC)
4. Docket 40489, Big Sky Airlines', Application for compensation for losses at Sheridan, Wyoming. (Memo 2235, BDA, OCCCA, BCAA, OC)
5. Docket 39203, Essential air service for Atka, Alaska. (Memo 068-E, BDA, OCCCA)
6. Docket EAS-388, Appeal of the City of Lewiston, Idaho, of the essential air service determination for Lewiston, Idaho/Clarkston, Washington. (Memo 077-B, 077-C, OGC, OCCCA, BDA)
7. Commuter carrier fitness determination of Omniflight Helicopters, Inc. (Memo 2236, BDA)
8. Commuter carrier fitness determination of Tropical Helicopter Airways, Inc. (BDA)
9. Docket 41231, Application of Northeastern International Airways, Inc. for a certificate of public convenience and necessity to serve Bermuda. (Memo 2237, BIA, OGC, BALJ)
10. U.S.-People's Republic of China Aviation Relations. (BIA)
11. Aviation Relations with Korea. (BIA)
12. United Kingdom—Report on Consultations. (BIA)
13. ECAC—Discussion. (BIA).

STATUS: 1-9 Open. 10-13 Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, *the Secretary.* (202) 673-5068.

[FR Doc. 84-5933 Filed 2-29-84; 9:13 am]
BILLING CODE 6320-01-M

2

FEDERAL ELECTION COMMISSION

FEDERAL REGISTER NO. 84-4880.

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, February 28, 1984, 10:00 a.m.

CHANGE IN MEETING: The closed meeting scheduled for this date has been canceled.

* * * * *

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, March 6, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, March 8, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTER TO BE CONSIDERED:

Setting of dates for future meetings
Correction and approval of minutes
Eligibility reports for candidates to receive Presidential primary matching funds
Clearinghouse Advisory Panel meeting
Finance Committee report
Classification action—Establishment of permanent, part-time position—Clerk (typing)
Routine administrative matters

PERSON TO CONTRACT FOR INFORMATION: Mr. Fred Eiland, information officer, telephone 202-523-4065.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 84-5973 Filed 2-28-84; 12:50 pm]
BILLING CODE 6715-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, February 27, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of Citicorp Financial Services Corporation, Nashville, Tennessee, an operating noninsured industrial loan and thrift company converting to an industrial bank, for Federal deposit insurance.

The Board further determined, by the same majority vote, the Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Flagship Bank of Orlando, Orlando, Florida, an insured State nonmember bank, for consent to merge with First Fidelity Savings and Loan Association, Winter Park, Florida, a non-FDIC insured institution.

Application of Flagship Bank of Seminole, Sanford, Florida, an insured State nonmember bank, and Sun Bank/Southwest, National Association, Cape Coral, Florida, for consent to transfer certain assets to First Fidelity Savings and Loan Association, Winter Park, Florida, a non-FDIC insured institution, in consideration of the assumption of the liability for deposits made in the Tuscawilla Branch, Casselberry, Florida, and the Wekiva Branch, Apopka, Florida, of Flagship Bank of Seminole and the Coralwood Mall Branch, Cape Coral, Florida, of Sun Bank/Southwest, National Association.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: February 27, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-5705 Filed 2-28-84; 1:17 pm]

BILLING CODE 6714-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, February 27, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Planters Bank & Trust Company of Virginia, Augusta County (P.O. Fishersville), Virginia, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay certain deposits made in the Verona Branch of Bank of Virginia, Richmond, Virginia, and for consent to establish that branch as a branch of Planters Bank & Trust Company of Virginia.

Application of First Trust and Savings Company, Davenport, Iowa, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in Security State Trust & Savings Bank, Bettendorf, Iowa, and for consent to establish the two offices of Security State Trust & Savings Bank as branches of First Trust and Savings Company.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: February 27, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-5708 Filed 2-28-84; 1:17 pm]

BILLING CODE 6714-01-M

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FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 A.M.— March 7, 1984.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Agreement No. 10270-5: Modification of the Gulf European Freight Association Agreement to provide for revised procedures for independent action on rate matters.
2. Modification of Reporting Requirements of Shippers' Requests and Complaints—Notice of Proposed Rulemaking.
3. Special Docket No. 1119: Application of Lykes Bros. Steamship Co., Inc. for the benefit of ADM Milling Company—Consideration of the record.

Portions Closed to the public:

1. Docket No. 79-2: Agreement No. 10293; Docket No. 79-3: Agreement No. 10295—Consideration of the record.
2. Docket No. 82-30: Contract Marine Carriers, Inc.—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 84-5739 Filed 2-28-84; 3:50 pm]

BILLING CODE 6730-01-M

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FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 6598, February 22, 1984.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Monday, February 27, 1984.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added: Federal Reserve Bank and Branch director appointments. (This item was originally announced for a meeting on February 21, 1984.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: February 27, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-5632 Filed 2-28-84; 9:13 am]

BILLING CODE 6210-01-M

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HARRY S TRUMAN SCHOLARSHIP FOUNDATION

TIME AND DATE: 10 a.m., Monday, April 9, 1984.

PLACE: Board Room, 712 Jackson Place, NW., Washington, D.C. 20006.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Call meeting to order. Check quorum.
2. Adoption of proposed agenda.
3. Approval of minutes of September 12, 1983 meeting.
4. Election of Chairman.
5. Report of the Chairman.
6. Report of Executive Secretary.
7. Report of General Counsel.
8. New Business.
9. Set date for next meeting in September, 1984.

Portions closed to the public:

1. Selection of Truman Scholars for 1984-85.

CONTACT PERSON FOR MORE INFORMATION: Malcolm C. McCormack, Executive Secretary, telephone, (202) 395-4831.

Malcolm C. McCormack,

Executive Secretary.

February 28, 1984.

[FR Doc. 84-4563 Filed 2-28-84; 1:43 pm]

BILLING CODE 9500-01-M

federal register

Thursday
March 1, 1984

Part II

Department of Housing and Urban Development

48 CFR Ch. 24

Acquisition Regulations; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Ch. 24

[Docket No. R-84-1145; FR-1860]

Acquisition Regulations

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This rule establishes the Department's acquisition regulations, which implement and supplement the Federal Acquisition Regulations (FAR) jointly promulgated on September 19, 1983, by the Department of Defense, the General Services Administration and the National Aeronautics and Space Administration. The FAR was promulgated as the uniform, simplified acquisition regulation called for by Executive Order 12352, Federal Procurement Reforms. The uniform regulation will eliminate the confusion caused contractors by differing policies among the various Federal agencies. The intended effect of the Department's acquisition regulations is to implement the FAR where required and to supplement the FAR in areas where there is no FAR coverage of policies unique to HUD.

DATES: Effective date is April 1, 1984. Comment due date is April 30, 1984.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, telephone (202) 755-5294. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background and This Rule

The policies and procedures of the Federal Government regarding the procurement of supplies and services have been developed in a largely independent fashion. Many statutes bearing on Federal contracting have been directed toward specific agencies. Federal agencies traditionally have developed their own contracting procedures with limited attention to uniformity among agencies. The result of this is the current system of procurement policies that vary from agency to agency and cause confusion within the contracting community. As long ago as 1972, the Commission on Government Procurement recommended that there be a standard Government-wide procurement regulatory system. The Office of Federal Procurement Policy, created in 1974, has worked with the agencies and the public to create a uniform procurement regulation to be known as the Federal Acquisition Regulation (FAR).

The FAR was published in the Federal Register on September 19, 1983 with a scheduled effective date of April 1, 1984. (See 48 FR 42102.) The FAR will be codified as Chapter 1 of Title 48 of the Code of Federal Regulations.

Because of differing statutory authorities among Federal agencies, the FAR authorizes the agencies to issue regulations to implement FAR policies and procedures within the agency, and to include additional policies and procedures, solicitation provisions or contract clauses, to satisfy the specific needs of the agency. The regulations being published today represent the Department's necessary implementation and supplementation of the FAR.

Generally, this rule does not establish new policy. To a large extent, it is the result of: Reformatting the existing HUD Procurement Regulations (41 CFR Chapter 24); removing old portions which would duplicate new FAR coverage of subject matter not previously contained in Federal Procurement Regulations (41 CFR Chapter 1); and, inserting necessary Departmental procedures at those places the FAR requires agency implementation. (Existing regulations in 41 CFR Chapter 24 are superseded by these regulations, but remain in effect in Title 41 for those contracts entered into before the effective date of the new acquisition regulations.)

The Department highlights the following areas which contain new or revised provisions:

Part 2407—Acquisition Planning
Part 2409—Contractor Qualifications
Part 2419—Small Business and Small Disadvantaged Business Concerns
Part 2426—Minority Business Enterprises and Historically Black Colleges and Universities.

Since the FAR is to be the uniform Government-wide acquisition regulation, reviewers of this rule must remember that lack of coverage of a particular topic in the HUD acquisition regulations (HUDAR) means that the Department accepts the FAR coverage of the topic without need for further implementation.

Procedural Requirements

A. *Executive Order 12291.* David A. Stockman, Director of the Office of Management and Budget, has exempted procurement regulations from the requirements of a regulatory impact analysis and review required by Executive Order 12291 in a memorandum dated December 15, 1983 to Don Sowle, Administrator, Office of Procurement Policy and Christopher DeMuth, Administrator, Information and Regulatory Affairs.

B. *National Environmental Policy Act.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

C. *Regulatory Flexibility Act.* Consistent with the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities because the rule contains few changes in current acquisition regulations. To the extent changes are made to current regulations, they are designed to foster and promote participation of small entities in the Department's procurement program.

D. *Paperwork Reduction Act.* The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Please send any comments on the collection of information requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for HUD. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when it is assigned, will be announced by separate notice in the Federal Register.

E. *Administrative Procedure Act.* Section 553 of the Administrative Procedure Act exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking.

However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. In OFPP Policy letter 83-2, OFPP states that an agency must provide an opportunity for public comment before adopting procurement regulations if the regulations represent a "significant" change to existing regulations. "Significant" is defined generally as something which has an effect beyond the internal operating procedures of the agency or has a cost or administrative impact on contractors.

The Department has determined that this rule does not represent a significant change. As described earlier in the Preamble, changes made to HUD's procurement regulations are principally in the areas of format and internal procedures. The internal procedural changes are necessary to implement new policies established by the FAR.

The Department (see 24 CFR 10.1) traditionally has provided for prior notice and comment even when not required by the Administrative Procedure Act. Although this is the general policy of the Department, we have determined in this instance, for the reasons already stated, that it would be contrary to all interests involved to provide for prior notice and comment in this rulemaking. In addition, the FAR has a scheduled effective date of April 1, 1984. It is imperative that HUD's procurement regulations be effective at the same time as the FAR. For these reasons, the Department is issuing the HUD acquisition regulations as a general rule. Because the Department believes in soliciting comments to the extent practicable, it is accepting comments on these regulations for 60 days after the date of publication. The Department will review all comments and will consider changes to the rule to the extent possible.

F. *Department's Semiannual Agenda of Regulations.* This rule was listed in the Department's Semiannual Agenda of Regulations published on October 17, 1983 (48 FR 47418, 47469) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 48 CFR Chapter 24

Government procurement, HUD acquisition regulations.

Accordingly, the Department amends 48 CFR by establishing a new Chapter 24 as set forth below:

CHAPTER 24—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER A—GENERAL

Part
2401 Federal Acquisition Regulation System
2402 Definitions of words and terms
2403 Improper business practices and personal conflicts of interest
2404 Administrative matters
2405 Publicizing contract actions

SUBCHAPTER B—ACQUISITION PLANNING

2407 Acquisition planning
2409 Contractor qualifications

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

2413 Small purchase and other simplified purchase procedures
2414 Formal advertising
2415 Contracting by negotiation
2416 Types of contracts

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

2419 Small business and small disadvantaged business concerns
2420 Labor surplus area concerns
2421 Minority business enterprises and historically black colleges and universities
2424 Protection of privacy and freedom of information

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

2429 Taxes
2432 Contract financing

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

2436 Construction and architect-engineer contracts
2437 Service contracting
2449 Termination of contracts

SUBCHAPTER A—GENERAL

PART 2401—FEDERAL ACQUISITION REGULATION SYSTEM

Sec.
2401.000 Scope of part.

Subpart 2401.1—Purpose, Authority, Issuance

2401.100 Scope of subpart.
2401.101 Purpose.
2401.102 Authority.
2401.103 Applicability.
2401.104 Issuance.
2401.104-2 Arrangement of regulations.

Subpart 2401.3—Agency Acquisition Regulations

2401.301 Policy.
2401.302 Limitations.

Subpart 2401.4—Deviations From the FAR

2401.403 Individual deviations.
2401.404 Class deviations.

Subpart 2401.6—Contracting Authorities and Responsibilities

2401.601 General.
2401.601-1 Procurement executive.
2401.601-2 Office of Procurement and Contracts.
2401.602 Contracting Officers.
2401.602-70 Ratification of unauthorized contract awards.
2401.603 Selection, appointment, and termination of appointment.
2401.603-2 Selection.
2401.603-3 Appointment.

Authority. Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2401.000 Scope of part.

This part describes the method by which the Department of Housing and Urban Development (HUD) implements, supplements and deviates from the Federal Acquisition Regulation (FAR) through the establishment of the HUD Acquisition Regulation (HUDAR), which prescribes the Department's procurement policies and procedures under the FAR System.

Subpart 2401.1—Purpose, Authority, Issuance

2401.100 Scope of subpart.

This subpart describes the HUDAR and states its relationship to the FAR System. This subpart also provides the explanation of the purpose and the authorities under which the HUDAR is issued.

2401.101 Purpose.

The Department of Housing and Urban Development Acquisition Regulation is hereby established as Chapter 24 of the Federal Acquisition Regulation System (48 CFR Chapter 24). It is issued to provide uniform Departmental policies and procedures for the acquisition of supplies, personal property and non-personal services by the Department's contracting activities and to make these policies and procedures readily available to Departmental personnel and to the public.

2401.102 Authority.

The HUDAR is prescribed by the Assistant Secretary for Administration under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)), section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)), the Secretary's delegation effective January 19, 1976, 41 FR 2665, and the general authorization in FAR 1.301.

2401.103 Applicability.

All acquisition of personal property and non-personal services (including construction) by HUD, except as may be otherwise authorized by law, must be

accomplished in accordance with the HUDAR and the FAR.

2401.104 Issuance.

2401.104-2 Arrangement.

(a) *General.* Chapter 24 is divided into parts, subparts, sections, subsections, paragraphs and further subdivisions as necessary.

(b) *Numbering.* Generally, the numbering system and part, subpart, and section titles used in the HUDAR conform with those used in the FAR or as follows:

(1) When the HUDAR implements or deviates from a parallel part, subpart, section, subsection, or paragraph of the FAR, that implementation or deviation will be numbered and captioned where possible to correspond to the FAR part, subpart, section, subsection, or paragraph. For example, FAR Subpart 1.4, Deviations, is implemented in HUD's acquisition regulations at Subpart 2401.4, Deviations. (The "24" in the number indicates what chapter of Title 48 contains the HUDAR.)

(2) When HUD supplements material contained in the FAR, it is given a unique number containing the numerals "70" or higher. The rest of the number will parallel the FAR part, subpart, section, subsection or paragraph it is supplementing. For example, FAR 1.602, Contracting Officers, does not contain a provision for ratifying unauthorized contract awards. The HUDAR does provide for this. Since the subject matter supplements what is contained in FAR 1.602, the HUDAR section supplementing the FAR is numbered 2401.602-70.

(3) Where material in the FAR requires no implementation or deviation, there is no corresponding numbering in the HUDAR. Therefore, there may be gaps in the HUDAR sequence of numbers where the FAR, as written, is applicable to the HUDAR and requires no further implementation.

(c) *Citation.* The HUDAR will be cited in accordance with Federal Register standards approved for the FAR. Thus, this section when referred to in the HUDAR is cited as 2401.104-2(c). When this section is referred to formally in official documents, such as legal briefs, it should be cited as "48 CFR 2401.104-2(c)." Any section of the HUDAR may be formally identified by the section number, e.g., "HUDAR 2401.104-2." In the HUDAR, any reference to the FAR will be indicated by "FAR" followed by the section number, for example FAR 37.108.

Subpart 2401.3—Agency Acquisition Regulations

2401.301 Policy.

(a)(1) *Implementation.* The HUDAR implements and supplements the FAR. Implementation material is that which expands upon related FAR material. Supplementing material is that for which there is no counterpart in the FAR.

2401.302 Limitations.

(c) *Exclusions.* Certain HUD policies and procedures which come within the scope of this chapter are not included in the HUDAR. Not included is a policy or procedure of an internal nature or which is expected to be effective for a period of less than six months.

Subpart 2401.4—Deviations

2401.403 Individual deviations.

In individual cases, proposed deviations from the FAR or HUDAR shall be submitted to the Procurement Executive (see 2401.601-1) for approval or other necessary or appropriate action. A supporting statement shall be submitted with the proposed deviation indicating briefly the nature of the deviation and the reasons for granting the deviation, consistent with FAR 1.402. The contract file shall include a copy of the request submitted and the approval. In emergency situations involving individual cases, deviation approvals may be processed by telephone and later confirmed in writing.

2401.404 Class deviations.

For deviations which affect more than one contracting action, proposed deviations from the FAR or HUDAR shall be submitted to the Procurement Executive for approval or other necessary or appropriate action. Requests for deviations shall be supported by statements which fully disclose the nature of the deviation and the need there of. The Procurement Excutive will consider the proposal on an expedited basis and in the case of a proposed FAR deviation will comply with FAR 1.404.

Subpart 2401.6—Contracting Authority and Responsibilities

2401.601 General.

2401.601-1 Procurement Executive.

The Assistant Secretary for Administration is designated as the Department's Procurement Executive with responsibility for all Departmental procurement policy, regulations and procedures, and for the development of procurement systems, evaluation of systems performance in accordance with approved criteria, enhancement of career management of the procurement work force, and certification to the Secretary that the Department's procurement systems meet approved criteria.

2401.601-2 Office of Procurement and Contracts.

The Office of Procurement and Contracts, in the Office of the Assistant Secretary for Administration, is responsible for all Departmental procurement except as specified below. The Office of Procurement and Contract also is responsible for awarding all contracts and agreements in support of the Department's Consolidated Supply Program. Such awards will be made under the regulations found at 24 CFR Part 965, Subpart F. These contracts are established for voluntary use by the Public Housing Agencies and Indian Housing Authorities in their purchase of certain supplies and equipment necessary for the operation and maintenance of low-income housing.

(a) *Office of Housing's Acquired Property Program.* Through the Acquired Property Program, the Assistant Secretary for Housing-Federal Housing Commissioner is responsible for entering into and administering all procurement contracts with respect to all procurement of goods and services for the management, repair, improvement, alteration, demolition, maintenance, operation, rental, and sale or other disposition of all real and related property conveyed to or otherwise in the custody of the Secretary under the National Housing Act (12 U.S.C. 1701-1749). This includes the properties held by HUD as mortgagee-in-possession, and the publication of notices and advertisements in newspapers, magazines, and periodicals. This procurement operation is decentralized to specific positions at HUD Field Offices. In addition, the Office of Housing performs contracting functions through its Headquarters staff on all acquired property requirements having national applicability. Headquarters staff is also responsible for issuing internal procedures for the Acquired Property Program.

(b) *Government National Mortgage Association (GNMA).* The President, GNMA exercises procurement authority with respect to requirements related to GNMA's programmatic functions. The HUDAR does not apply to these procurement actions. The President, GNMA, is responisbile for issuing GNMA procurement procedures

consistent with standards established by the Procurement Executive.

(c) *Regional Offices.* Procurement of supplies and services for HUD Regional requirements is accomplished at each Regional Office by the Regional Contracting Officer and the Director of the Administrative Services Divisions, Office of Administration.

2401.602 Contracting Officers.

2401.602-70 Ratification of unauthorized contract awards.

Specific delegation has been given Contracting Officers to enter into contractual agreements and create obligations on behalf of the Department. No liability shall be incurred by the Department as the result of actions by its employees (other than Contracting Officers) which lead to unauthorized arrangements for the delivery of goods or services. If such unauthorized arrangements occur they require ratification before payment can be made. This can be avoided usually by sound procurement planning and by involving the Contracting Officer early in the procurement process. If ratification becomes necessary, the request for ratification shall be sent to the Contracting Officer through the Head of the Contracting Activity (HCA). The request will include an explanation as to the need for the service, the reason why normal procurement procedures were not followed, to what extent price competition was received or the price otherwise justified, and, corrective management actions to avoid ratifications in the future. If the justification is adequate, the ratification will be signed by the Contracting Officer. Ratification of unauthorized commitments in excess of $1,000 shall be signed by the HCA as well as the Contracting Officer. When circumstances warrant, the HCA may establish more stringent ratification procedures.

2401.603 Selection, appointment and termination of appointment.

2401.603-2 Selection.

In selecting Contracting Officers, the appointing authorities shall consider experience, education, training, business acumen, judgment, character, reputation and ethics. In the area of experience, education and training, the following shall be required unless contracting authority is limited to simplified small purchase procedures:

(a) Experience, for appointment of an individual to a position having Contracting Officer authority, shall consist of a minimum of two years experience performing contracting, procurement or purchasing operations in a government or commercial procurement office. Alternatively, where appointment field, experience in the field may be considered as a criterion for the appointment.

(b) Educational requirements for an individual in a position having Contracting Officer authority shall be, as a minimum, the equivalent of a Bachelor's Degree from an accredited college or institution preferably with major studies in Business Administration, Law, Accounting or related fields. Experience related to the field of procurement involved (e.g., supply construction, etc.), gained in a government or nongovernment procurement office, may be substituted for educational requirements when it is determined in writing and made a part of the appointment files (as stipulated in 2401.603-3(b)) that a potential appointee is otherwise qualified by virtue of extensive contract-related experience or training.

(c) Training requirements of an individual Contracting Officer or an individual appointed to a position having contracting authority shall include successful completion of training courses in Government Basic Procurement of not less than 80 hours and Government Contract Administration of not less than 80 hours. These requirements may be temporarily waived by the Field Office Manager/ Supervisor for Contracting Officers serving the Acquired Property Program. Appointees or incumbents not meeting the special training requirements shall be given 24 months to acquire the minimum qualification standards.

(d) The selection requirements specified in paragraphs (a) through (c) of this section are applicable to all full-time permanent (FTP) personnel whose primary duties are performed as a Contracting Officer as opposed to the individuals who supervise Contracting Officers, or to individuals who normally spend less than 10 percent of their time in the capacity of a Contracting Officer.

2401.603-3 Appointment.

(a) Appointments below the level of Assistant Secretary shall be made in writing by the Head of the Contracting Activity on a "Certificate of Appointment," SF 1402. Limitations on the scope of the authority to be exercised by the Contracting Officer, other than those contained in applicable laws and regulations shall be entered on the face of the appointment notification.

(b) Field Office Managers or Supervisors will execute a written affirmative statement that the individual, placed in the position to commit the Government as Contracting Officer, meets the selection criteria of the Federal Acquisition Regulation and HUDAR. If a temporary waiver (see 2401.603-2) is to be granted concerning the training requirements, the written statement should include the waiver and the statement that the training requirements must be met within 24 months. This statement shall be made part of the official personnel file of the Contracting Officer or the individual so selected or designated. The designation and statement shall be based on the size and complexity of contracts the individual will be required to execute and administer, and also shall consider any limitations on the scope of the authority to be exercised.

PART 2402—DEFINITIONS OF WORDS AND TERMS

Sec.
2402.000 Scope of part.
Subpart 2402.1 Definitions
2402.101 Definitions.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2402.000 Scope of part.

This part contains definitions of terms used generally throughout the HUDAR, in addition to those set forth in FAR Part 2. Additional definitions will be found in individual subparts of the FAR and HUDAR covering terms used in those subparts only.

Subpart 2402.1—Definitions

2402.10 Definitions.

"Department" means the Department of Housing and Urban Development, which may also be designated as "HUD."

"Secretary" means the Secretary of Housing and Urban Development, or designee.

"Head of Contracting Activity (HCA)" as used in the HUDAR has the meaning ascribed to it in the FAR. The following HUD officials are designated HCA's:

(a) *Director, Office of Procurement and Contracts* for HUD headquarters procurement and the Consolidated Supply Program;

(b) *The Regional Directors, Offices of Administration* for regional office procurement;

(c) *The Chief, Reconditioning and Contracting Branch* for national contracts on acquired properties;

(d) *The Manager, HUD Field Offices* for decentralized procurement on acquired properties; and

(e) *The President, Government National Mortgage Association* for procurements related to GNMA's programmatic functions.

"Primary Organization Heads" are those officials of the Department who are responsible for the major organizational components of HUD and who report directly to the Secretary or Under Secretary. The Primary Organization Heads of HUD are: Assistant Secretary(ies), the General Counsel, the Deputy Under Secretary(ies), President of GNMA, Inspector General and Regional Administrator(s).

PART 2403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.

Subpart 2403.1—Safeguards

2403.101 Standards of conduct.

Subpart 2403.2—Contractor Gratuities to Government Personnel

2403.203 Reporting procedures.
2403.204 Treatment of violations.

Subpart 2403.3—Reports of Identical Bids and Suspected Antitrust Violations

2403.303-70 Reporting requirements.

Subpart 2403.4—Contingent Fees

2403.408 Evaluation of the SF 119.
2403.408-1 Responsibilities.
2403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 2403.5—Other Improper Business Practices

2403.502 Subcontractor kickbacks.

Subpart 2403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2403.601 Policy.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2403.1—Safeguards

2403.101 Standards of conduct.

Detailed rules which apply to the conduct of HUD employees are set forth in 24 CFR Part 0.

Subpart 2403.2—Contractor Gratuities to Government Personnel

2403.203 Reporting procedures.

Suspected violations of the gratuities clause (FAR 52.203-3) shall be reported to the Head of the Contracting Activity (HCA) in writing. The HCA will request the Office of Inspector General (OIG) to conduct any necessary investigation. Upon receipt of the OIG report, the HCA will evaluate the circumstances to determine if a violation has occurred. The HCA will refer violations and recommended corrective actions to the Procurement Executive for disposition.

2403.204 Treatment of violations.

The Procurement Executive will process violations in accordance with FAR 3.204.

Subpart 2403.3—Reports of Identical Bids and Suspected Antitrust Violations

2403.303-70 Reporting requirements.

Potential anti-competitive practices such as described in FAR Subpart 3.3, evidenced in bids or proposals, shall be reported to the Office of General Counsel through the Head of the Contracting Activity with a copy to the Procurement Executive and the Inspector General. The Office of General Counsel will provide reports to the Attorney General as appropriate.

Subpart 2403.4—Contingent Fees

2403.408-1 Responsibilities.

(b) The contracting officer's documentation of the evaluation, conclusion, and any proposed actions shall be submitted for the review and approval of the Head of the Contracting Activity and the Office of General Counsel.

2403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Government personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant against Contingent Fees shall report the matter promptly to the Head of the Contracting Activity.

(b) When there is specific evidence or other reasonable basis to suspect one or more of the violations in paragraph (a) of this section, the Head of the Contracting Activity shall review the facts and, if appropriate, take or direct one or more of the following, or other, actions:

(1) If before award, reject the bid or proposal.

(2) If after award, enforce the government's right to void the contract or to recover the fee.

(3) Initiate suspension or debarment action.

(4) Refer suspected fraudulent or criminal matters to the Office of Inspector General for possible referral to the Department of Justice.

Subpart 2403.5—Other Improper Business Practices

2403.502 Subcontractor kickbacks.

(b) Contracting Officers shall report suspected violations of the Anti-Kickback Act through the Head of the Contracting Activity to the Office of Inspector General consistent with the procedures for reporting any violation of law contained in HUD Handbook 2000.3, REV. 2, Office of Inspector General Activities (1983).

Subpart 2403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2403.601 Policy.

The Procurement Executive must approve exceptions to the restriction against contracts with Government employees under FAR Subpart 3.6. In addition, the Contracting Officer shall comply with FAR Subpart 9.5 before awarding any such contract.

PART 2404—ADMINISTRATIVE MATTERS

Subpart 2404.8—Contract Files

2404.805-1 Disposal of contract files.

Unsuccessful bids and proposals shall be disposed of as follows:

(a) *By the contracting activity.* Unsuccessful cost and technical proposals shall be retained in the procuring activity for a period of two months following the contract award as reference material for debriefings. Upon expiration of the two month period, the procurement office shall ship one copy of each unsuccessful bid or proposal to the Federal Records Center unless (1) a debriefing has been requested but not held or (2) a protest is pending concerning the procurement. In no event shall these documents be destroyed before expiration of the retention periods in FAR 4.805.

(b) *By the program office.* Unsuccessful proposals shall be retained on file in the program office which conducted the technical evaluation for a period of two months following the contract award. Upon expiration of the two month period, the program office shall return one copy of each unsuccessful bid or proposal not required for the conduct of debriefings to the contracting activity for proper disposition. The remaining copies will be destroyed.

(Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

PART 2405—PUBLICIZING CONTRACT ACTIONS

Subpart 2405.5—Paid Advertisements

2405.502 Authority.

Use of paid advertisements in newspapers, trade journals, and other media are authorized by Delegations or Redelegations of Authority, subject to the availability of funds.

(Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

SUBCHAPTER B—ACQUISITION PLANNING

PART 2407—ACQUISITION PLANNING

Subpart 2407.1—Acquisition Plans

2407.102 Policy.

The Procurement Executive is responsible for establishing and maintaining internal procedures to implement the Department's Advance Procurement Planning System (APPS). The APPS should generally meet the criteria contained in FAR Subpart 7.1.

(Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

PART 2409—CONTRACTOR QUALIFICATIONS

Subpart 2409.5—Organizational Conflicts of Interest

Sec.

2409.500 Scope of subpart.
2409.501 Definition.
2409.502 Applicability.
2409.504 Contracting Officer responsibilities.

Subpart 2409.70—Debarment, Suspension, and Ineligibility

2409.701 HUD regulations on debarment, suspension, and ineligibility.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2409.5—Organizational Conflicts of Interest

2409.500 Scope of subpart.

This subpart prescribes responsibilities, general rules, and procedures for identifying, evaluating, and resolving organizational conflicts of interest.

2409.501 Definition.

"Organizational conflict of interest" is a situation in which the nature of work under a proposed Government contract and a prospective contractor's organizational financial, contractual, or other interests are such that (a) award of the contract may result in an unfair competitive advantage to the contractor or (b) impair the contractor's objectivity in performing the contract work.

2409.502 Applicability.

The procedures described in this section shall be used for all consulting services contracts and for any other procurement involving the acquisition of services when the Contracting Officer determines that the nature of the procurement presents a potential for an organizational conflict of interest.

2409.504 Contracting officer responsibilities.

The following actions are required whenever it is determined that this section is applicable:

(a) *Disclosure or Representation.* (1) Each solicitation shall contain a provision which requires a potential offeror to provide a statement which describes in a concise manner all relevant facts concerning any present or current planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed under this section and bearing on whether the offeror and any proposed subcontractor or consultant has a possible organizational conflict of interest with respect to:

(i) Being able to render impartial, technically sound, and objective assistance or advice; or

(ii) Being given an unfair competitive advantage.

The offeror also may provide relevant facts that show how its organizational structure or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organizations and how that structure or system would eliminate or neutralize such organizational conflict.

(2) In the absence of any interest referred to above, the offeror shall submit a statement certifying that to the best of its knowledge and belief no such interest exists.

(3) The Contracting Officer will review the statement submitted and may require additional relevant information from the offeror. All such information and any other relevant information known to the Contracting Officer will be used to determine whether an award to the offeror may create any organizational conflict of interest. If such organizational conflict of interest is found to exist, the Contracting Officer may:

(i) Impose appropriate conditions which eliminate or neutralize such conflict;

(ii) Disqualify the offeror; or,

(iii) Determine that it is otherwise in the best interests of the United States to contract with the offeror by including appropriate conditions mitigating such conflict in the contract awarded.

(4) Failure to provide the disclosure or execute the representation will be deemed to be a minor infraction and the offeror or contractor will be permitted to correct the omission within a time frame established by the Contracting Officer.

(5) Refusal to provide the disclosure or representation and any additional information as required, or the willful nondisclosure or misrepresentation of any relevant interest shall disqualify the offeror or contractor for award or provide the rationale for post award default action if the exercise of due diligence would have disclosed an apparent conflict. This provision applies equally to post award disclosure requirements contained in the clause required by paragraph (b) of this section.

(b) *Contract clause.* All contract actions subject to the above disclosure or representation requirements shall include the following clause:

Organizational Conflicts of Interest

(1) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed Government contract and a prospective contractor's organizational, financial, contractual or other interests are such that:

(i) Award of the contract may result in an unfair competitive advantage;

(ii) The contractor's objectivity in performing the contract work may be impaired; or

(iii) That the contractor has disclosed all relevant information and requested the Contracting Officer to make a determination with respect to this contract.

(2) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the contractor has taken or intends to take to eliminate or neutralize the conflict. The Government may, however, terminate the contract for the convenience of the Government if it would be in the best interests of the Government.

(3) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the Government may terminate the contract for default.

Subcontracts

(4) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the Government and shall include any necessary provisions to

eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this contract.

(c) *Administrative requirements.* (1) The disclosure or representation required above is designed to alert the Contracting Officer to situations or relationships which may constitute either present or anticipated organizational conflicts of interest with respect to a particular offeror or contractor. However, this disclosure or representation may not identify a potential organizational conflict of interest involving a successful offeror that could affect his or her participation in subsequent procurements arising out of or related to work performed under a contract that results from the solicitation currently under consideration. Accordingly, whenever such potential conflicts are foreseeable, a special notice also shall be included in the solicitation informing offerors of the fact that such a potential conflict is foreseen and that a special contract clause designed to eliminate or neutralize such conflict will be included in any resultant contract. Such notice shall specify the proposed extent and duration of restrictions to be imposed with respect to participation in subsequent procurements. A fixed term of reasonable duration is measured by the time required to eliminate what otherwise would constitute an unfair competitive advantage. This is a variable. However, in no event shall an exclusion be stated which is not related to a specific expiration date or a certain event. The Govenment shall not determine without notice on an after-the-fact basis that performance of a contract created an organizational conflict of interest with respect to procurements arising out of or related to work performed under that contract.

(2) Whenever an organizational conflict of interest is found to exist, it shall be adequately eliminated, or neutralized through the use of an appropriate special contract clause. Examples of the types of clauses which may be employed include, but are not limited, to the following:

(i) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related nonproduction contract previously performed by the Contractor.

(ii) Software exclusion clauses which:

(A) Require the contractor, members of his or her Board of Directors, or his or her chief executives to eliminate, or neutralize an organizational conflict of interest:

(B) Provide for the protection of the confidentiality of data and guard against its unauthorized use; or

(C) Prohibit other segments or divisions of the contractor from becoming involved in the performance of the contract work or being in a position to influence such work.

(iii) The prospective contractor shall be given the opportunity to negotiate the terms and conditions of the clause and its application. The extent and time period of any restrictions shall be specified in the clause.

(d) *Contract award when an organizational conflict of interest is present.* (1) No contract or modification award shall be made to an offeror or contractor having an organizational conflict of interest with respect to that contract or modifications unless:

(i) The conflict has been eliminated or neutralized; or

(ii) The Contracting Officer determines that the award of the contract would be otherwise in the best interests of the Government. Where such a determination is made, an appropriate written finding and determination shall be placed in the contract file.

(2) Examples of circumstances justifying such a determination include but are not necessarily limited to:

(i) Situations where the public exigency will not otherwise permit; or,

(ii) Situations where the requirement cannot otherwise be obtained.

(3) The Contracting Officer's determination shall be approved by the Head of the Contracting Activity before award.

(e) *Action in Lieu of Termination.* If the Contracting Officer determines that it would not be in the best interests of the Government to terminate a contract as provided in the clause cited in paragraph (b) of this section, the Contracting Officer shall take every reasonable action to eliminate, or otherwise neutralize the organizational conflict of interest.

Subpart 2409.70—Debarment, Suspension, and Ineligibility

2409.701 HUD regulations on debarment, suspension, and ineligibility.

Departmental policies and procedures concerning debarment and suspension are contained in 24 CFR Part 24.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACTING TYPES

PART 2413—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 2413.4—Imprest Fund

2413.403 Agency responsibilities.

(d) If imprest funds are to be used, the procedures established by HUD Handbook 1925.2, Establishment and Operation of Imprest Funds (April, 1981) will be followed.

(Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

PART 2414—FORMAL ADVERTISING

Subpart 2414.4—Opening of Bids and Award of Contracts

Sec.

2414.406 Mistakes in bid.
2414.406-3 Other mistakes disclosed before award.
2414.406-4 Mistakes after award.
2414.407 Award.
2414.407-2 Reasonable bidder—reasonableness of price.
2414.407-8 Protest against award.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2414.4—Opening of Bids and Award of Contracts

2414.406 Mistakes in bids.

2414.406-3 Other mistakes disclosed before award.

Mistakes in bids discovered before award (other than obvious clerical errors) shall be submitted to the following authorities for determinations in accordance with FAR 14.406-3:

(a) *Director, Office of Procurement and Contracts* for all Departmental procurement, except as set forth in paragraph (b) of this section.

(b) *Field Office Managers for the Acquired Property Program.* The Field Office Manager will obtain the concurrence of the Office of General Counsel in Headquarters or Regional Counsel in the field before notification to the bidder. The Contracting Officer shall be notified promptly of the course of action to be taken.

2414.406-4 Mistakes after award.

If a contractor's discovery and request for correction of a mistake in bid is not made until after the award, it shall be processed in accordance with FAR 14.406-4. For each determination, the Field Office Manager will obtain the concurrence of the Office of General Counsel (Headquarters) or Regional Counsel (field) before notification to the

bidder. The Contracting Officer shall be notified promptly of the course of action to be taken.

2414.407-701 Award when only one bid is received.

When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if the Contracting Officer makes a written determination that: (a) The specifications were clear and not unduly restrictive; (b) adequate competition was solicited and it could have been reasonably assumed that more than one bid would have been submitted; (c) the price is reasonable; and (b) the bid is otherwise in accordance with the invitation for bids. Such a determination shall be placed in the file.

2414.407-8 Protest against award.

(a) The following identifies the responsible agents and sets forth procedural requirements for handling protests, except for protests against awards under acquired property contracts, which shall be processed in accordance with 24 CFR Part 20. For the purpose of definition, as used in this section "working days" means the working days of the Agencies of the Federal Government, excluding Saturdays, Sundays and Federal holidays, as specified in 5 U.S.C. 6103.

(b) *Protest before award*—(1) *Resolution by contracting office.* Interested parties are urged to seek resolution of their complaints initially with the contracting activity. The Contracting Officer shall act on any protest filed with the contracting activity (see FAR 14.407-8(a)) unless it is known that a protest has been filed concurrently with the General Accounting Office (GAO). Where a written protest is filed directly with the contracting activity, full consideration shall be given to the protest with the protester notified in writing of the final decision on the protest within thirty working days from the date of receipt by the Department. Where GAO views are required, the time for rendering a decision shall be ten working days from receipt of GAO views. Where the Contracting Officer makes a determination to award a contract notwithstanding a protest as authorized by FAR 14.407-8(b)(4), the Head of the Contracting Activity shall approve such a determination before award. The appropriate official mentioned above shall notify the Office of General Counsel of the intent to make an award and the Office of General Counsel shall notify the GAO of such proposed action. Parties interested in protesting directly to GAO shall do so in accordance with the General Accounting Office regulations at 4 CFR Part 21.

(2) *Responsibility.* The Office of General Counsel has the responsibility for handling matters relating to protests against award of contracts within the Department and for liaison with the GAO. All communications concerning a protest written or otherwise directed to GAO shall be coordinated with the Office of General Counsel. All written communcations from the Department to GAO shall be by the Office of General Counsel. The Contracting Officer has the responsibility for furnishing the Office of General Counsel with all information relating to the protest.

(3) *Times for filing.* The times for filing are as follows:

(i) Protests based on alleged improprieties in any type of solicitation which are apparent before bid opening or the closing date for the receipt of proposals shall be filed before that date. In other cases a protest shall be filed to be received by the Department or GAO not later than five working days after the basis for protest is known or should have been known, whichever is earlier. Where such protest has been filed initially with HUD's contracting activity any subsequent protest to the GAO must be delivered to the GAO within five working days after notification of adverse action by HUD's procuring activity. GAO will consider the protest only if the initial protest was filed on a timely basis with the contracting activity.

(ii) Any additional statements by the protester in support of the protest to the GAO shall be mailed or otherwise furnished to the GAO, and one (1) copy sent to the contracting activity, no later than five working days after filing of the initial protest or receipt of notification from the GAO of the need for an additional statement.

(4) *Notice of protest and submission of report.* (i) When advised by GAO of the receipt of protest, the Office of General Counsel will inform the contracting activity immediately. The Contracting Officer shall promptly notify in writing the Contractor or all bidders or offerors who, in the opinion of the Contracting Officer, appear to have a reasonable prospect of receiving an award if the protest is denied. Upon receipt by the Department of a written request for a formal report from the GAO relating to a protest, the Office of General Counsel shall prepare and file such report in accordance with GAO requirements at 4 CFR Part 21.

(c) *Protest after award.* Protests initially received after contract award are subject to the procedure in paragraph (b) of this section.

PART 2415—CONTRACTING BY NEGOTIATION

Subpart 2415.1—General Requirements for Negotiation

Sec.
2415.105 Competition.

Subpart 2415.4—Solicitation and Receipt of Proposals and Quotations

2415.403 Issuing solicitations.
2415.413 Disclosure and use of information before award.
2415.413-1 Alternate 1.

Subpart 2415.5—Unsolicited Proposals.

2415.505 Content of unsolicited proposals.
2415.505-70 Unsolicited research proposals.

Subpart 2415.5—Source Selection

2415.605 Evaluation factors.
2415.612 Formal source selection.
2415.670 Informal source selection procedures.

Subpart 2415.10—Pre-Award and Post-Award Notifications, Protests and Mistakes

2415.1003 Protests against award.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2415.1—General Requirements for Negotiation

2415.105 Competition.

(d) The Procurement executive shall provide for the operation of a Procurement Review Board (PRB) to review all Headquarters proposed noncompetitive and consulting service awards in excess of the applicable small purchase limitation. The PRB shall be comprised of senior Departmental managers and shall use criteria consistent with those in the FAR in evaluating proposed awards.

(e) Regional Administrators/Regional Housing Commissioners shall provide for the operation of Regional Procurement Review Boards based upon directions received from the Procurement Executive.

Subpart 2415.4—Solicitation and Receipt of Proposals and Quotations

2415.403 Issuing solicitations.

(d) The FAR policy on bidding time for formally advertised procurements (FAR 14.202-1) is applicable to negotiated procurements under this part.

2415.413 Disclosure and use of information before award.

2415.413-1 Alternate 1.

The Department shall employ the procedures in FAR Alternate 1 regarding disclosure and use of information.

Subpart 2415.5—Unsolicited Proposals.

2415.505 Content of unsolicited proposals.

2415.505-70 Unsolicited research proposals.

FAR Subpart 15.5 outlines the policies and procedures relating to unsolicited proposals. In addition to these requirements, the Department requires that each award made as the result of an unsolicited proposal for research contain a commitment to provide actual cost-sharing. This provision will be included in the award whether or not cost-sharing was part of the unsolicited proposal.

2415.506 Agency procedures.

(a) The contact points shall ensure that unsolicited proposals are controlled, evaluated, safeguarded, and disposed of in accordance with FAR Subpart 15.5.

(b) Unless otherwise specified in a Federal Register announcement unsolicited proposals should be submitted to the following contact points:

(1) *For research*—Department of Housing and Urban Development, Assistant Secretary for Policy Development and Research, Office of Management and Program Control, 451 7th Street SW., Washington, D.C. 20410.

(2) *For all others*—Department of Housing and Urban Development, Director, Office of Procurement and Contracts, 451 7th Street SW., Washington, D.C. 20410.

Subpart 2415.6—Source Selection

2415.605 Evaluation factors.

(e) The Request for Proposal (RFP) shall state clearly the evaluation factors that will be considered in making the source selection and their relative importance. Each technical factor and subfactor shall be assigned a numerical weight which shall appear in the RFP. These factors will serve as the standard against which all proposals will be evaluated.

2415.612 Formal source selection.

On those procurements where the expected dollar amount will exceed $500,000, the following will apply:

(a) Selection of the source or sources for final contract negotiations shall be made by the Contracting Officer, consistent with his or her responsibilities under FAR 1.602. The selection shall be based upon the findings and recommendations of the Source Selection Official (SSO) who is the head of the funding office or his/her designee. To assist the SSO in evaluating proposals and making recommendations for selection, the SSO shall designate a Source Evaluation Board (SEB) composed of a chairperson, voting members, and advisors.

(b) After the deadline for receipt of offers, the Contracting Officer will forward five copies of the technical portion of each proposal to the SEB chairman or his or her designee, who shall be responsible for custody of the offers throughout the evaluation process. The business portions of each proposal will be retained by the Contracting Officer pending initial technical evaluation by the SEB.

(c) The SEB will evaluate each proposal in strict conformance with the factors for award of the RFP, and will assign each proposal a score on the basis of the factors for award. The SEB shall identify each proposal as being either acceptable or unacceptable. A proposal should be considered unacceptable if its deficiencies cannot be corrected through written and oral discussions to the point of having a reasonable chance of being selected for award. Predetermined cutoff scores designed for determining the threshold level of acceptability of proposals shall not be employed.

(d) After the initial technical evaluation, the Contracting Officer and the SEB will evaluate the business portion of each proposal.

(e) Unless the SEB is prepared to recommend under FAR 15.610(a)(6) that the award be made on the basis of the most favorable initial proposal, the SEB shall establish a competitive range based upon the evaluation of all the factors for award including cost or price. The SEB determination is subject to the review and approval of the Contracting Officer.

(f) The SEB shall conduct written or oral discussions with all proposers within the competitive range as outlined in 2415.670-1(e).

(g) After the close of discussions, receipt of any revisions to proposals and any final adjustments to proposal scores, the SEB shall prepare a written report of its findings and recommendations and submit it to the SSO for action. The report shall summarize all significant SEB actions in the solicitation and evaluation phases and include:

(1) *Statement of findings.* Each acceptable proposal shall be discussed in descending order of scores/rankings. The statement shall identify the strengths and weaknesses of each proposal and any appropriate information for the consideration of the SSO.

(2) *Recommendations.* The SEB shall provide recommendations to the SSO as to selection in terms of: (i) A single source; (ii) A number of equal sources; (iii) A number of sources in descending order; or (iv) options to be considered in arriving at the final decision. In making its recommendation, the SEB shall consider the requirements set forth in 2415.670(h).

(h) Based upon the SEB report and his or her review of the matter, the SSO will recommend a source or sources and document the basis for his or her recommendation. The SSO will communicate these findings and recommendation in a memorandum to the Contracting Officer. The memorandum will request the Contracting Officer to negotiate with the recommended source(s), and may include specific instructions and an alternate source or sources in the event the conduct of final negotiations so warrants.

(i) After receipt of the SSO's recommendation, the Contracting Officer will select a source, based upon the findings and recommendation of the SSO for final negotiations in accordance with 2415.670(i). A proposal shall not be considered accepted or contract awarded until final negotiations are completed with the source and a contract is executed.

2415.670 Informal source selection.

On procurements where the expected dollar amount will not exceed $500,000 the Department will use the following procedures:

(a) *Forwarding proposals.* After the deadline for receipt of offers, the Contracting Officer will forward five copies of the technical portion of each proposal to the Technical Evaluation Panel (TEP) for evaluation. The TEP will be composed of one or more technical personnel designated by the program or initiating office prior to issuance of the solicitation. The business portions of each proposal will be retained by the Contracting Officer for subsequent evaluation.

(b) *Evaluation.* The TEP will evaluate each proposal in strict conformity with the factors for award set forth in the RFP, and will assign each a score on the

basis of the factors for award. The TEP shall identify each proposal as being either acceptable or unacceptable. A proposal shall be considered unacceptable if it is so clearly deficient that it cannot be corrected through written or oral discussions. Predetermined cutoff scores designed for determining the threshold level of acceptability of proposals shall not be employed.

(c) *Report.* A TEP report shall be prepared and signed by the technical evaluator(s), furnished to the Contracting Officer, and maintained as a permanent record in the official procurement file. The report shall reflect the scoring of each proposal and the rankings of the proposals, and shall identify each proposal as acceptable or unacceptable. The report shall also include a narrative evaluation specifying the strengths and weaknesses of each proposal, and any reservations or qualifications that may bear upon the selection of sources for negotation and award. Specific technical reasons supporting a determination of unacceptability with regard to any proposal shall be included. Score sheets of all panel members shall be appended to the report.

(d) *Review of report.* After submission of the TEP report, the Contracting Officer and the TEP will evaluate the business portion of each proposal.

(e) *Competitive range.* Unless it is determined under FAR 15.610(a)(6) that award shall be made on the basis of the most favorable initial proposal, the Contracting Officer will determine which offers are within the competitive range. A determination of the limits of the competitive range requires a comparison of the evaluation of each proposal against the evaluation of other proposals and therefore cannot be predetermined on the basis of a given number of or percentage of proposals. The competitive range shall include all proposals which have a reasonable chance of being selected for award.

(f) *Conduct of discussions.* The Contracting Officer (or his or her designee) and the Technical Evaluation Panel will conduct written or oral discussions of the work to be performed, the cost/price of the work, and other relevant points, with all those offerors within the competitive range. Discussions are not required if the conditions of FAR 15.610(a)(6) are applicable. The Contracting Officer shall point out to each offeror the ambiguities, uncertainties, and deficiencies, if any, in his or her proposal which can be corrected without major changes to the proposal. He or she shall give each offeror a reasonable opportunity (with a common cutoff date for all) to support, clarify, correct, improve, or revise his or her proposal. Discussions with an offeror should disclose deficiencies in the proposal but should not identify approaches or ideas through which another offeror has achieved a higher evaluation. No information will be revealed by the Government which could give one offeror an unfair competitive advantage over another. Cost estimates made by the Government will not be disclosed.

(g) *Extent of discussions.* Careful judgment will be exercised in determining the extent of discussions. In some cases, good business practice may require more than one round of discussions with proposers within the competitive range depending upon the time constraints, the expense, administrative limitations, and the overall significance of the procurement.

(h) *Selection of contractor.* (1) After the close of discussions and receipt of any revisions to proposals, the TEP shall perform a final evaluation and prepare its selection recommendation(s). The TEP shall then forward the recommendation(s) through the appropriate officials having a need to know, as designated by the funding Assistant Secretary, to the Contracting Officer who shall select for final contract negotiation the offeror whose proposal promises the greatest value to the Government in terms of cost or price, technical and other relevant factors.

(2) Cost and price shall be considered in the selection of a contractor. This is particularly true where more than one acceptable offer from technically qualified sources remains for consideration after conduct of negotiations. If a lower priced, lower scored offer meets the Government's needs, acceptance of a higher priced, higher scored offer shall be supported by a specific determination by the Contracting Officer that the technical superiority of the higher priced offer warrants the additional cost involved in the award of a contract to that offeror. Offers exceeding the Government's needs are not a basis for technical superiority.

(i) *Final negotiation and award.* Under a negotiated procurement, selection of the source or sources marks only the first phase of finalizing the award. Steps remaining include: (1) Reaching agreement with the selected source on the costing/pricing, technical, and other provisions that will condition his/her performance under the contract; (2) setting forth these terms in a mutually acceptable contractual document; and (3) having and documenting a sound, rational basis for the results negotiated.

After negotiation is completed, the Contracting Officer will effect appropriate coordination, prepare a negotiation memorandum and execute the contract.

Subpart 2415.10—Pre-award and Post-award Notifications, Protests and Mistakes

2415.1003 Protests against award.

Protests against awards of negotiated procurement shall be processed in accordance with 2414.407-8.

PART 2416—TYPES OF CONTRACTS

Sec.

Subpart 2416.3—Cost-Reimbursement Contracts

2416.301 General.
2416.301-3 Limitations.

Subpart 2416.4—Incentive Contracts

2416.405 Contract clauses.

Subpart 2416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2416.603 Letter contracts.
2416.603-2 Application.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2416.3—Cost-Reimbursement Contracts

2416.301 General.

2426.301-3 Limitations.

(c) The Head of the Contracting Activity, or designee, may approve the determinations and findings required by FAR 16.301-3(c).

Subpart 2416.4—Incentive Contracts

2416.405 Contract clauses.

(e)(1) Award fee contracts should include in the contract schedule the Articles shown below. The Articles may be modified to meet individual situations and any Article of specific requirement therein should be deleted when it is not applicable to a given contract. If substantial changes are believed appropriate, consultation with the Director, Policy and Evaluation Division, Office of Procurement and Contracts, is encouraged.

ARTICLE (Insert Article Number)—

Estimated Cost, Base Fee, and Award Fee

The estimated cost of this contract is $ (Insert Amount). A base fee of $ (Insert Amount) is payable in accordance with the ARTICLE entitled "Payment of Base and Award Fee." In addition, a maximum Award Fee of $ (Insert Amount) is available for

payment in accordance with the ARTICLE entitled "Payment of Base and Award Fee."

ARTICLE (Insert Article Number)—

Payment of Base and Award Fee

Base Fee. The government will make payment of the base fee in (Insert Number) increments. The amount payable shall be based on the progress as determined by the Contracting Officer and shall be subject to any withholdings as may be provided for elsewhere in this contract.

Award Fee. The government will promptly make payment of any Award Fee upon the submission, by the contractor to the Contracting Officer or his/her authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment shall be made without the need for a contract modification.

ARTICLE (Insert Article Number)—

Determination of Award Fee Earned

A. The government shall at the conclusion of each specified evaluation period(s) evaluate the contractor's performance for a determination of award fee earned. The contractor agrees that the determination as to the amount of award fee earned will be made by the government Fee Determination Official (FDO) designated in the contract and such determination concerning the amount of award fee earned is binding on both parties and shall not be subject to appeal under the "Disputes" clause or to any other appeal clause.

B. It is agreed that the evaluation of contractor performance shall be in accordance with the Performance Evaluation Plan referenced in the ARTICLE entitled "Performance Evaluation Plan" and that the contractor shall be promptly advised in writing of the determination, and the reasons why it was or was not earned. It is further agreed that the contractor may submit a self-evaluation of performance of each period under consideration. While it is recognized that the basis for determination of the fee shall be the evaluation by the government, any self-evaluation which is received within (Insert Number) days after the end of the period being evaluated, may be given such consideration, if any, as the FDO shall find appropriate.

C. The FDO may, in his or her sole discretion, specify in any fee determination that fee not earned during the period evaluated may be accumulated and be available for allocation and/or "Distribution of Award Fee" shall be adjusted to reflect such allocations.

ARTICLE (Insert Article Number)—

Performance Evaluation Plan

A. A contractor Performance Evaluation Plan upon which the determination of award fee shall be based, including the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area, will be unilaterally established by the government. A copy of the plan shall be provided to the contractor (Insert Number) calendar days prior to the start of the first evaluation period.

B. The Performance Evaluation Plan shall set forth the criteria upon which the contractor will be evaluated for performance relating to any (1) Technical Functions, including Schedule requirements if appropriate, (2) Management Functions, and (3) Cost Functions selected for evaluation.

C. The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the government at any time during the period of performance. Notification of such changes shall be provided to the contractor (Insert Number) calendar days prior to the start of the evaluation period to which the change will apply.

ARTICLE (Insert Article Number)—

Distribution of Award Fee

A. The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:

Evaluation Period
Available Award Fee

B. In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro-rata distribution associated with evaluation period activities or events as determined by the Fee Determination Official.

The general provisions required for cost reimbursement contracts should be modified for use under award fee contracts as cited below:

(i) The words "base fee and award fee" should be substituted for the term "fixed-fee" where it appears in the clause at FAR 52.243-2. Changes.

(ii) The word "base fee" should be substituted for the word "fee" where it appears in the clauses at FAR 52.232-20, Limitation of Costs, and FAR 52.232-22, Limitation of Funds.

(iii) The words "base fee, if any, and such additional fee as may be awarded as provided for in the schedule" should be substituted for the term "fee" wherever it appears in the clause at FAR 52.216-7, Allowable Cost and Payment.

Subpart 2416.6—Time-And-Materials, Labor-Hour, and Letter Contracts

2416.603 Letter contracts.

2416.603-2 Application.

(c) In accordance with FAR 16.603-2(c), a letter contract shall be made definite within 180 days of the date of award or after completion of 40 percent of the work to be performed, whichever occurs first, unless different terms are approved in advance by the Head of the Contracting Activity.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 2419.2—Policies

Sec.

2419.201 General policy.

Subpart 2419.5—Set-Asides for Small Business

2419.503 Setting aside a class of acquisitions.

Subpart 2419.9—Contracting Opportunities for Women-Owned Small Business

2419.901 Policy.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2419.2—Policies

2419.201 General policy.

(c) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Headquarters, is responsible for the administration of the HUD small and small disadvantaged business programs. This includes Department-wide responsibility for developing, implementing, executing, and managing these programs, providing advice on these programs, and representing HUD before other government agencies on matters primarily affecting small and small disadvantaged businesses.

(d) Each Regional Administrator shall designate a Senior Small Business Specialist, who shall coordinate and monitor the activities of the small business/small disadvantaged business specialists designated by each Head of a Contracting Activity, as provided in paragraph (e) of this section.

(e) Each head of a contracting activity shall designate a small business/small disadvantaged business specialist who shall perform the following functions:

(1) Maintain a program designed to locate capable small/small disadvantaged business sources for current and future procurements;

(2) Coordinate inquiries and requests for advice from small/small disadvantaged business concerns on procurement matters;

(3) Review proposed requirements for supplies and services, ensure that small/small disadvantaged business concerns will be afforded an equitable opportunity to compete, and, as appropriate, initiate recommendation for small business or Section 8a set-asides (under the Small Business Act);

(4) Take action to ensure the availability of adequate specifications and drawings, when necessary, to obtain small/small disadvantaged business participation in a procurement;

(5) Review proposed procurements for possible breakout of items suitable for procurement from small/small disadvantaged business concerns;

(6) Advise small/small disadvantaged business concerns with respect to the financial assistance available under existing laws and regulations and assist

such concerns in applying for financial assistance;

(7) Ensure that adequate records are maintained and accurate reports are prepared concerning small/small disadvantaged business participation in the procurement program;

(8) Make available to SBA copies of solicitations, when requested, and

(9) Act as liaison between the Contracting Officer and the appropriate SBA office in connection with set-asides, certificates of competency, size classification, and any other matter in which the small/small disadvantaged business program may be involved.

Subpart 2419.5—Set-Asides for Small Business

2419.503 Setting aside a class of acquisitions.

(a) *Class set-aside for construction.* A class set-aside is hereby made for each proposed procurement for construction with an estimated cost of less than $1,000,000. Accordingly, Contracting Officers shall set aside for small business each such proposed procurement. If a Contracting Officer determines that any individual procurement falling within the class set-aside requirements of this Section is unsuitable for such a set-aside in part or in total, the set-aside may be withdrawn with the concurrence of the Head of the Contracting Activity. Proposed procurements for construction which exceed an estimate of $500,000 shall be considered for set-aside on a case-by-case basis.

Subpart 2419.9—Contracting Opportunities for Woman-Owned Small Businesses

2419.901 Policy.

Executive Order 12138, May 18, 1979 (44 FR 29637, 3 CFR, 1979 Comp., P. 890) directs agencies to take appropriate action to facilitate, preserve and strengthen women's business enterprise and to ensure full participation by women in the free enterprise system. The Office of Small and Disadvantaged Business Utilization is responsible for establishing Department-wide goals for awards to women-owned businesses and monitoring and reporting progress against those goals.

PART 2420—LABOR SURPLUS AREA CONCERNS

Subpart 2420.1—General

2420.102 General policy.

It is the policy of the Department to award appropriate contracts to eligible labor surplus area (LSA) concerns and encourage contractors to place subcontracts with LSA concerns. Policies and procedures with regard to the LSA program are set forth in FAR Part 20. The Office of Small and Disadvantaged Business Utilization is responsible for establishing Department-wide goals for the LSA program and monitoring and reporting progress against those goals.

(Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

PART 2421—MINORITY BUSINESS ENTERPRISES AND HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

Sec.

Subpart 2421.1—Minority Business Enterprises

2421.101 Policy.
2421.102 Responsibilities.
2421.103 Certifiction of status as a minority business enterprise.

Subpart 2421.2—Historically Black Colleges and Universities

2421.201 Policy.

Authority Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2421.1—Minority Business Enterprises

2421.101 Policy.

It is the policy of the Department to foster and promote Minority Business Enterprise (MBE) participation in its procurement program, to the extent permitted by law and consistent with its primary mission. A "minority business enterprise" is a business which is at least 51 percent owned by one or more minority group members; or, in case of a publicly-owned business, one in which at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. For this purpose, minority group members are Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Asian Indian Americans.

2421.102 Responsibilities.

(a) *The Assistant Secretary for Fair Housing and Equal Opportunity.* The Assistant Secretary for Fair Housing and Equal Opportunity develops Departmental plans and policies for MBE functions in accordance with Executive Orders 11625 and 12432 and by directive from the Secretary. He or she provides advice and guidance to the Secretary and to other Assistant Secretaries on MBE functions, reviews and makes recommendations to the Secretary on MBE annual plans and goals of other Assistant Secretaries, monitors and evaluates the Department's MBE functions, and reports on the MBE program to Primary Organization Heads and to the Department of Commerce.

(b) *Director of the Office of Small and Disadvantaged Business Utilization (OSDBU).* The Director of the Office of Small and Disadvantaged Business Utilization performs a staff role for the Secretary with respect to MBE functions.

2421.103 Certification of status as a minority business enterprise.

All contracting activities shall request all interested Contractors, bidders, or offerors (including sources utilized through small purchase procedures) to complete, on a voluntary basis, a certification as to whether they are a minority business enterprise as defined under 2421.101. Completion of this certification is not a condition of eligibility for contract award.

RFQ/IFB/FRP No. _____
Purchase Order/Contract No. _____

U.S. Department of Housing and Urban Development additional certification of status as a Minority Business Enterprise.

Offerors, bidders or suppliers are requested to complete, sign and attach this page, in single copy, to any bid, proposal or quote submitted under the Solicitation identified above. Completion of the certification is not a condition of eligibility for contract award.

The Bidder/Offeror/Supplier certifies that he ☐ is, ☐ is not, (check one) a minority business enterprise which is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Asian Indian Americans.

(Name and title of person signing.) _____
Signature _____
Date _____

Subpart 2421.2—Historically Black Colleges and Universities

2421.201 Policy.

Executive Order 12320, September 15, 1981 (46 FR 46107), 3 CFR, 1981 Comp., P. 176), directed the Department to establish annual plans to increase the ability of Historically Black Colleges and Universities to participate in Federally sponsored programs including contracts, grants and cooperative agreements. OSDBU is responsible for developing the annual plans regarding the participation of Historically Black Colleges and Universities in Departmental programs. OSDBU is responsible also for ensuring that the reporting requirements are fulfilled.

PART 2424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Sec.

Subpart 2424.1—Protection of Individual Privacy Procedures

2424.103 Procedures.

Subpart 2424.2—Freedom of Information Act

2424.202 Policy.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2424.1—Protection of Individual Privacy

2424.103 Procedures.

(b)(2) See 24 CFR Part 16 for the HUD regulations which implement the Privacy Act.

Subpart 2424.2—Freedom of Information Act

2424.202 Policy.

See 24 CFR Part 15 for the HUD regulations which implement the Freedom of Information Act.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2429—TAXES

Subpart 2429.1—General

2429.101 Resolving of tax problems.

In order to have uniformity in HUD's treatment of the tax aspects of contracting and ensure effective cooperation with other Government agencies on tax matters of mutual interest, the Office of General Counsel has the responsibility within HUD for handling all those tax problems. Therefore, the contracting activity will not engage in negotiation with any taxing authority for the purpose of determining the validity or applicability of, or obtaining exemptions from or refund of, any tax. When a problem exists, the Contracting Officer shall request in writing the Office of General Counsel's assistance. The request shall detail the problem and be accompanied by appropriate backup data. The Office of General Counsel shall report to the Contracting Officer as to the necessary disposition of the tax problem. The Contracting Officer will notify the contractor of the outcome of the tax problem. The Office of General Counsel shall have the responsibility for communications with the Department of Justice for representation or intervention in proceedings concerning taxes.

Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

PART 2432—CONTRACT FINANCING

Subpart 2432.4—Advance Payments

2432.410 Findings, determination and authorization.

(c) The Determination and findings required by FAR 32.402(c)(1)(iii) shall be made by the Head of the Contracting Activity only in those instances where specific delegation of authority has been issued in writing giving the HCA such authority to approve advances.

Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

PART 2436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 2436.6—Architect-Engineer Services

Sec.

2436.602 Selection of firms for architect-engineer contracts.
2436.602-2 Evaluation boards.
2436.602-4 Selection authority.
2436.602-5 Short selection processes for contracts not to exceed $10,000.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d))).

Subpart 2436.6—Architect-Engineer Services

2436.602 Selection of firms for architect-engineer contracts.

2436.602-2 Evaluation boards.

(a) Each architect-engineer evaluation board, whether permanent or ad hoc, shall consist of at least three voting members who are Federal employees from the appropriate program area or from Federal offices outside the program area as appropriate. One member of each board shall be appointed Chairperson. Three (3) alternate members who are Federal employees shall also be appointed, but at any given time the majority of voting members shall be from the program area concerned. The members of a permanent board shall be appointed for a period of two years. Appointment shall be made by the following authorities with copies of appointment memoranda furnished to the appropriate contracting activity:

(1) *Assistant Secretary* or equivalent for boards appointed at the Headquarters level;

(2) *Field Office Manager* for boards appointed at the Field Office level.

(c) *Conflict of interest.* Each board member, whether voting or nonvoting, shall become familiar with those provisions of 24 CFR, Subtitle A, Part O, Housing and Housing Credit regulations regarding conflicts of interest. If at any time during the selection process a board member encounters a situation with one or more of the firms being considered that might be or might appear to be a conflict of interest, he or she will disqualify him or herself and call it to the attention of the Chairperson for resolution and proper action. The Chairperson will refer the matter to the Office of General Counsel.

(d) *Confidentiality.* The evaluation board is to be insulated from outside pressures, to the extent practical. No person having knowledge of the activities of the board shall divulge information concerning the deliberations of the board to any other persons not having a need to know such information.

2436.602-4 Selection Authority.

(a) The final selection decision shall be made by the appropriate Primary Organization Head (Headquarters) or the appropriate Field Office Manager (Field).

2436.602-5 Short selection processes for contracts not to exceed $10,000.

The short selection process described in FAR 36.602-5(a) is authorized for used for contracts not expected to exceed $10,000.

PART 2437—SERVICE CONTRACTING

Subpart 2437.2—Consulting Services

2437.204 Policy

All proposed consulting service awards in excess of the applicable small purchase limitation are subject to the review and approval of the Headquarters and Field Procurement Review Boards mandated by 2415.105.

Subchapter G—Contract Management

(Sec. (d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

PART 2449—TERMINATION OF CONTRACTS

Subpart 2449.1—General Principles

2449.111 Review of proposed settlements.

The Head of the Contracting Activity shall establish internal procedures to ensure the independent review of proposed termination settlements in excess of $100,000.

(Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Dated: Feburary 24, 1984.

Donald J. Keuch Jr.,

Deputy Assistant Secretary for Administration.

[FR Doc. 84-5503 Filed 2-29-84; 8:45 am]

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Thursday
March 1, 1984

Part III

Department of Health and Human Services

Office of Human Development Services

Administration for Children, Youth and Families; Runaway and Homeless Youth Program; Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13623-841]

Administration for Children, Youth and Families; Runaway and Homeless Youth Program; Availability of Financial Assistance

AGENCY: Office of Human Development Services, Department of Health and Human Services.

ACTION: Announcement of Availability of Financial Assistance—Centers for Runaway and Homeless Youth and Coordinated Networking Grants.

SUMMARY: The Administration for Children, Youth and Families (ACYF), Youth Development Bureau, announces the availability of fiscal year 1984 funds for the Runaway and Homeless Youth Basic Center Grants and the Coordinated Networking Grants Programs. These grants are authorized by the Runaway and Homeless Youth Act, 42 U.S.C. 5701 et seq. This Act was enacted by Title III of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93-415), as amended by the Juvenile Justice Amendments of 1977 (Pub. L. 95-115), and the Juvenile Justice Amendments of 1980 (Pub. L. 96-509).

This program announcement consists of three parts. Part I covers the scope of this announcement and generally describes the following: the purpose, goals and objectives of the Runaway and Homeless Youth Program; the two types of grants to be supported during FY 1984—Basic Center and Coordinated Networking Grants; and the application and review process attendant to the award of grants under Parts II and III of this announcement. Part II describes the Basic Center Grants component and provides detailed guidance on how to prepare and submit an application. Part III describes the Coordinated Networking Grants component and gives detailed guidance on how to prepare and submit an application for the separate part.

FOR FURTHER INFORMATION CONTACT: ACUF/Youth Development Bureau, Division of Runaway and Homeless Youth Programs, 400 Sixth Street, SW., Room 5754, Washington, D.C. 20201, Telephone: (202) 755-8208.

DATE: The closing date for receipt of all applications under Parts II and III of this announcement is April 16, 1984.

Part I: General Considerations

A. Scope of This Program Announcement

This program announcement solicits applications and describes the application process for the Basic Center Grants and the Coordinated Networking Grants Programs to be competitively awarded during the third and fourth quarters of fiscal year 1984. The grantees who are eligible for non-competitive basic center continuation grants will receive administrative guidance for the submission of their applications from their respective regional offices, listed at the end of this program announcement. They are, therefore, not covered under this announcement.

B. Program Purpose

The purpose of the National Runaway and Homeless Youth Program is to provide financial assistance to establish or strengthen community-based centers designed to address the needs (e.g., outreach, detached youth work, temporary shelter, counseling, family counseling and aftercare services) of runaway and homeless youth and their families. Additionally, Section 311(a) of the Act authorizes the Secretary "to make grants . . . to coordinated networks . . ." These grants are to provide financial assistance to the coordinated service networks of runaway and homeless youth serving agencies to develop and strengthen the coordination of resources and services to runaway and homeless youth and their families between and among the public and private sectors.

Programs receiving Runaway and Homeless Youth Act funding under Parts II and III of this announcement are required to be knowledgeable of and to adhere to the requirements of 45 CFR Part 1351, Runaway and Homeless Youth Program, and other applicable Federal regulations. Applicants must develop their application in accordance with those regulations and the supplementary instructions which are included in this announcement.

C. Program Goals and Objectives

The program goals and objectives of the Runaway and Homeless Youth Act are to assist runaway and homeless youth centers to: (a) Alleviate the problems of runaway and homeless youth; (b) reunite youth and their families and to encourage the resolution of intrafamily problems through counseling and other services; (c) strengthen family relationships and to encourage stable living conditions for youth; and (d) help youth decide upon a future course of action.

The centers to be funded under Part II of this program announcement are required to provide outreach, temporary shelter, individual and group counseling, family counseling and aftercare services. These services must address the immediate needs of youth while they are away from home, and provide individual and family counseling and other assistance needed to resolve intrafamily problems, and to strengthen family relationships. Additionally, both directly and through linkages with other social service agencies, the centers are required to furnish other assistance such as health, education, legal, and employment services geared to the needs of the individual clients and families served.

For FY 1984, a special emphasis is being placed on strengthening the coordination of resources and services for runaway and homeless youth and their families by supporting, through one-time grants, coordianted networks of nonprofit, private service agencies at the State, local or regional levels. The applications for networking grants will be solicited and reviewed under three discrete priority areas. The networking priority areas are: Networking to develop effective community responses to the needs of older adolescents; networking to expand the State role in meeting the needs of runaway and homeless youth; and networking support for center-oriented problem solving. Part III of this announcement provides detailed guidance on the requirements and application procedures for this activity.

D. Application Process

Eligible organizations wishing to compete for Basic Center or Coordinated Networking Grants must submit a completed application by April 16, 1984. All applicants must clearly identify on the application form (SF 424, Box 7) whether they are applying for a Runaway and Homeless Youth Basic Center Grant or Coordinated Networking Grant. Applications received in response to this announcement will be reviewed by ACYF and other Federal staff and non-Federal experts.

Agencies and organizations interested in applying for funds may receive application information from the Youth Development Bureau, ACYF, 400 6th Street, SW., Washington, D.C. 20201—Attention ACYF-YDB-841. Telephone: (202) 755-8208.

1. Application Requirements

In order to be considered for a Runaway and Homeless Youth Basic Center or Coordinated Networking Grant, an application must be submitted on the forms and in the manner required by the Administration for Children, Youth and Families.

The application must be executed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in this announcement. All the information needed and the forms required to submit a complete application under this program are contained in this announcement.

2. Notification Under Executive Order 12372

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs", and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities", previously the A-95 review process. In those States that have opted to review applications for financial assistance under the Runaway and Homeless Youth Act Program, State processes or directly affected State, areawide, regional and local officials and entities have sixty (60) days to comment on your application, starting from the deadline date for application submission.

Applicants are encouraged to submit material required by their State Single Point of Contact as early as possible and are encouraged to obtain comments prior to the submission of the application. Material should be submitted to the applicable State Single Point of Contact identified in the listing included at the end of this announcement. The applicant should forward any comments received by the State process to ACYF. ACYF will notify the State of any application reveived which has no indication that the State process had an opportunity to review it.

3. Priority for Funding

Section 313 of the Runaway and Homeless Youth Act requires that priority for funding be given to organizations with demonstrated experience in providing services to runaway and homeless youth, and their families, and to organizations requesting grants of less than $150,000. As specified in 45 CFR 1351.12—"Past experience means that a major activity or the agency has been the provision of temporary shelter, counseling, and referral services to runaway and otherwise homeless youth and their families, either directly or through linkages established with other community agencies."

4. Availability of Forms

For your convenience, a copy of each form required to submit an application for a grant under the Runaway and Homeless Youth Program is included in the Appendices to this announcement. Title III of Pub. L. 98-509, the Runaway and Homeless Act, and the Code of Federal Regulations (CFR) Title 45, Part 1351—Runaway Youth Program may be available at the main branch of your local public library, university libraries, U.S. Government Printing Office bookstores, or from the ACYF regional offices listed at the end of this announcement. These materials may also be obtainen by writing to: ACYF, Youth Development Bureau, Division of Runaway and Homeless Youth Programs, 400 Sixth Street, SW., Room 5754, Washington, D.C. 20201, Telephone: (202) 755-8208.

Additional copies of this announcement are also available from the above address or may be obtained from the regional offices listed at the end of this announcement.

5. Application Consideration

All applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation process against the specific criteria outlined in Sections II-D and III-G of this program announcement. This review will be conducted in Washington, D.C. Reviewers will include individuals knowledgeable in the areas of youth development and/or human service programs (from States other than the one being reviewed), Federal staff and other experts. The results of the competitive review will be taken into consideration by the Director of the Youth Development Bureau who, in consultation with the ACYF regional officials, will recommend projects to be funded. The ACYF Commissioner will make the final selection of applicants to be funded. The Commissioner may elect not to fund any applicants that have known management, fiscal or other problems or situations which make it unlikely that they would be able to provide effective services to runaway and homeless youth. For example, this might apply to an applicant which has failed to serve an adequate number of runaway and homeless youth in the past. Successful applicants will be notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, the non-Federal share to be provided, and the total project period for which support is provided. Organizations whose applications have been disapproved will be notified in writing of that decision.

Part II: Basic Center Grants

A. Eligible Applicants

States, localities, private non-profit agencies and coordinated networks of such agencies are eligible to apply for a Runaway and Homeless Youth Basic Center Grant as long as they are not a part of the law enforcement structure or the juvenile justice system. States are defined to include any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territories of the Pacific Islands, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. (See 42 U.S.C. 5603(7) as amended by Sec. 5(c) of Pub. L. 98-509). Federally recognized Indian tribes are eligible to apply for grants as local units of government. Non-Federally recognized Indian tribes and Indian organizations are eligible to apply for grants as private nonprofit agencies.

B. Available Funds

The Administration for Children, Youth and Families expects to award a total amount of approximately $18,000,000 in Basic Center Grants to an estimated 240 programs for runaway and homeless youth in fiscal year 1984. Of that amount, an estimated $2,200,000 will be available for the non-competing continuations that were funded for the first time in fiscal year 1981 for a four year project period. It is anticipated that the balance of approximately $15,800,000 will be available under Part II of this announcement to fund an estimated 198 programs, including some new centers in currently unserved communities that did not receive funding under the Runaway and Homeless Youth Act (Title III, Pub. L. 98-509) during the previous center grants competition held in fiscal year 1983. It is also anticipated that the project and budget periods of grants, both competitive and non-competitive, will be for a period of 12 months.

The number of Basic Center Grants awarded within each State will depend upon the State's allocation and the

number of acceptable applications. Also, all applicants under this announcement will compete with other applicants in the State in which their services will be provided. In the event that agencies within any State jurisdiction either submit applications which fail to meet the minimum criteria for funding, or do not submit applications, the Assistant Secretary for Human Development Services may reallocate any such unused funds.

Under Section 313 of this Act, as amended (42 U.S.C. 5713), DHHS, in considering both Basic Center and Coordinated Networking Grant applications, gives priority to organizations which have a demonstrated experience in the provision of services to runaway and homeless youth and their families and to organizations requesting grants of less than $150,000. In negotiating the final budgets for successful applicants, consideration will be given to the need expressed in the application which identifies the number of runaway or homeless youth in the community in which the center will be located; the existing availability of services designed to meet the immediate needs of runaway and homeless youth and their families; and the range and types of services to be provided under the proposed project within the requirements of the Act, as shown in criterion number 3, Section D of the announcement.

The following table indicates the total fiscal year 1984 allocations for each State.

RUNAWAY AND HOMELESS YOUTH CENTERS ALLOCATIONS BY STATE

[Total 57 States—Fiscal year 1984]

Alabama	$324,809
Alaska	39,692
Arizona	234,581
Arkansas	180,460
California	1,823,502
Colorado	230,631
Connecticut	216,562
Delaware	45,110
District of Columbia	37,896
Florida	681,620
Georgia	456,707
Hawaii	77,599
Idaho	86,622
Illinois	880,595
Indiana	433,107
Iowa	223,770
Kansas	180,463
Kentucky	292,126
Louisiana	376,946
Maine	86,621
Maryland	312,020
Massachusetts	397,014
Michigan	723,648
Minnesota	319,417
Mississippi	223,772
Missouri	369,947
Montana	63,165
Nebraska	122,582
Nevada	64,137
New Hampshire	70,502
New Jersey	533,102

RUNAWAY AND HOMELESS YOUTH CENTERS ALLOCATIONS BY STATE—Continued

[Total 57 States—Fiscal year 1984]

New Mexico	117,302
New York	1,266,801
North Carolina	452,958
North Dakota	54,138
Ohio	835,531
Oklahoma	247,231
Oregon	198,509
Pennsylvania	839,143
Rhode Island	64,967
South Carolina	259,863
South Dakota	55,944
Tennessee	353,704
Texas	1,271,123
Utah	162,415
Vermont	37,900
Virginia	404,231
Washington	306,817
West Virginia	151,588
Wisconsin	368,142
Wyoming	43,311
Puerto Rico	350,093
Virgin Islands	12,631
American Samoa	3,611
Guam	12,632
Pacific Trust Territories	18,046
Northern Mariana Islands	1,806
Total	$18,000,000

C. Grantee Share of the Project

A ten percent match of the Federal dollars requested is required of all grants funded under this announcement. The non-Federal portion may be for grantee incurred costs or in-kind contributions (including the facility, equipment or services) and must be project-related and allowable under the cost principles as provided in 45 CFR Part 74, the Department's regulation on the Administration of Grants.

D. Review Criteria

All competitive applications for financial assistance to support the operation of basic centers for runaway and homeless youth will be reviewed and evaluated against the following criteria:

1. The reasonableness of the proposed budget, including a justification for costs. (10 points)

2. The extent to which the applicant has demonstrated the ability to access other resources which can strengthen support for the existing or proposed center's activities and to remain a viable organization at the expiration of the Federal funding period. (15 points)

3. The extent to which the application documents the need for services to runaway and homeless youths in proposed service areas (e.g., specific communities, districts, neighborhoods) on the basis of a comprehensive community needs assessment, including the extent to which the selection of these areas is based on the incidence of runaway and homeless youth.

a. Documentation of the need and availability of services for runaway and homeless youth within the locality to be served by the Runaway and Homeless Youth Program. (Citation of data sources) (5 points)

b. Documentation of the number of runaway and homeless youth. (Current and by source) (5 points)

c. Evidence of a connection between the needs identified and the program of services planned or offered by the applicant agency. (5 points)

d. Description of the relationship between the location of the center to other existing availability services within the community and discusses the results or benefits anticipated in terms of both clients served and the community at large and the State (for example: youth reunification with the family, reduction in delinquency). (5 points)

Total: 20 points.

4. The ability of the applicant to design, establish and continue a center which can achieve the goals and requirements of this grant program as set forth in the Runaway and Homeless Youth Act, the Administrative Requirements (45 CFR Part 1351), and the Program Performance Standards.

a. Adequate documentation which provides a narrative of prior experience in planning, organizing and providing services to runaway and homeless youth and their families. This discussion should include, but not be limited to, the methods for providing:

- Outreach/community relations
- Individual intake
- Case planning with each youth
- Temporary shelter
- Individual, family and group counseling
- Aftercare
- Service linkages
- Alternative placements for youth who cannot return home
- Provision for and verification of the safe arrival home or in alternative placement (15 points)

b. The applicant adequately provides a description of the procedures which are or will be employed in the following areas:

- Documentation which shows that the facility where the youth will be sheltered is in compliance with applicable State and local licensing requirements; and certification that no more than 20 youth will be sheltered in a single facility.
- Procedures to be employed in providing shelter on a 24-hour basis to runaway and homeless youth directly or indirectly.

• Procedures for contacting the parents or legal guardians if the youth is provided temporary shelter, including a summary of applicable State and local laws regarding parental permission requirements.

• Provisions for linking the center's activities with the National Communications System/National Runaway Switchboard.

• How the center has developed or will develop working relationships with law enforcement; juvenile court, and local public and private agency personnel, including procedures for returning youth who have run away from correctional institutions in accordance with applicable Federal, State and local laws.

• How the center has demonstrated active participation in local and State networks or coalitions of youth serving agencies or other human service organizations. (15 points)

c. The applicant provides a discussion of plans for collecting and maintaining adequate statistical records profiling the youth and families served and the procedures to be employed to ensure the confidentiality of this information. The applicant also provides quantitative monthly reports and quarterly projections of program accomplishments. (5 points)

d. The applicant provides an organizational chart; describes how the project is staffed, how staff are selected, trained and supervised; and how the organization ensures 24 hour accessibility and adequate adult/youth ratio at all times; and provides position descriptions and resumés for key staff and a listing of board members. This criterion includes a description of the recruitment, training and utilization efforts for volunteers in the organization, including their roles; and the extent to which the program has defined specific roles for youth in planning, policy, decision making and service delivery. (5 points)

Total: 40 points.

5. The extent to which the applicant organization has demonstrated experience in planning, organizing and/or providing information, temporary shelter, counseling and referral services to runaway and homeless youth and their families. (10 points)

6. The provision of assurances (i.e., written agreements, licenses) that the applicant will comply with the program requirement related to assurances provided for in the Code of Federal Regulations, Title 45, Part 1351. (5 points)

Total: 100 points.

E. Instructions for Completing the Application

1. *Application Requirements.* In order to be considered for a Basic Center Grant, an applicant must submit one signed original and two copies of the grant application, including all attachments. ACYF encourages the submission of an additional five copies for a total of eight copies in order to expedite the processing and to facilitate the panel review process. There is no penalty for not submitting these additional copies. One copy of the complete application should be sent to the appropriate Regional office listed at the end of this announcement. The remaining complete applications, including the original and all copies, must be sent to: HDS/Division of Grants and Contracts Management, 330 Independence Avenue, SW., Room 1740, Washington, D.C. 20201—Attention ACYF-YDB-841. The program announcement number (13623-341) must be clearly identified on the application (SF 424, box 6).

2. *Content of Application.* Each copy of the application must contain the following items in the order listed:

a. A Project Abstract Form
b. A Standard Form 424, page 1
c. Part II—Project Approval Information
d. Part III—Budget Information
e. Part IV—Project Narrative
f. HHS-SF 441, Assurance of Compliance, Title VI, Civil Rights Act of 1964
g. HHS-SF 641, Assurance of Compliance, Sec. 504, Rehabilitation Act of 1973, As Amended.

3. *Instructions for Preparing Application.* For your convenience, we have reprinted the forms and instructions for applying for Federal Assistance from HDS programs as appendices A and B to this announcement. We suggest that you reproduce the forms and use them to prepare your application.

Prepare your application in accordance with the following instructions:

a. Project Abstract Form—Please complete the Project Abstract Form which is Appendix A of this announcement. The completed form should be used as a cover sheet for your application. In order to facilitate handling, do not use covers, binders, or tabs.

b. Standard Form 424, page 1—Complete Standard Form 424, page 1 in accordance with the instructions contained in Appendix B.

c. Part II—Project Approval Information. This form is self-explanatory.

d. Part III—Budget Information—Complete Part III in accordance with the instructions contained in Appendix B.

e. Part IV—Project Narrative—Describe the project you propose in response to this announcement. Your narrative (27 pages typed single-spaced maximum, on 8½" × 11" plain white bond with 1" margins on both sides) should provide information on how application meets the review criteria. We strongly suggest that you follow these format and page limitations.

1. *Table of Contents.* Provide a Table of Contents including a listing of any appendices.

2. *Geographic Location.* Describe the precise location of the project. Maps or other graphic aids may be attached. (1 page).

3. *Objectives and Need For This Assistance.* (4 pages maximum, single spaced).

Provide a concise description documenting the need for services for runaway and homeless youth in the area to be served. These data must be doucmented by source and may be complied from the most recent census, police, juvenile court, welfare, existing runaway services and other sources. (1) Information should include data on the incidence of runaway and homeless youth in the geographic area to be served including the demographics of males, females; ethnic origin; ages; State of origin; approximate distance that clients have run to the center; services needed by youth and families; and outcomes as well as an analysis of the existing services for runaway and homeless youth in the community. (2) Demonstrate the connection between the needs identified and the program of services planned or offered by the applicant agency.

4. *Results or Benefits Expected.* (2 pages maximum, single space).

This section should identify the results and benefits to be derived from the implementation of services to runaway and homeless youth and their families under this grant program. Specifically, the applicant should describe: the results or benefits anticipated in terms of clients served, the community-at-large, the State (for example: Youth reunification with the family, independent living situations, aftercare services, reduction in delinquency, etc.). In addition, explain the criteria to be used to evaluate the results of successes of the project and to determine if the results and benefits identified are being acheived.

5. *Approach.* (20 pages maximum, single spaced, excluding timetables,

charts, supporting documentation or listings).

a. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for this grant program. This section of the program narrative must described the specific plan of action and program of services that would be provided under the proposed project and must reflect a conceptualization of the issues to be addressed relative to runaway and homeless youth and their families. Specifically, the program narrative must address at a minimum the following areas:

i. What services the center provides/will provide to runaway, homeless and other vulnerable youth and families and how they are/will be provided, including at a minimum: Outreach/community relations; individual intake; case planning with each youth; temporary shelter; individual and/or group counseling; family counseling; service linkages; alternative placements for youth who cannot return home; aftercare services (the range of services provided to youth having left the runaway/homeless youth program); and provision for and verification of the safe arrival to the youth's home or at an alternative placement.

ii. Documentation that the center is or will be located in an area which is frequented or easily reached by runaway and homeless youth and their families.

iii. How shelter service will be provided either directly or indirectly on a 24-hour basis; any applicable local and State licensing procedures and how they will be achieved; and certification that no more than 20 youth will be sheltered in a single facility.

iv. Procedure for contacting youths' parents or legal guardians, preferably within 24 hours but not to exceed 72 hours of the time youth enter the program, and a summary of applicable local and State laws regarding parental permission requirements.

v. How the center will link its activities with the national telephone communications system developed to facilitate communication between runaway and homeless youth and their families.

vi. How the center has developed, or will develop, working relationships with law enforcement, juvenile court, and local public and private agency personnel including procedures for returning youth who have run away from correctional institutions in accordance with applicable Federal, State and local laws.

vii. How the center has demonstrated active participation in local and State networks or coalitions of youth serving agencies or other human services organizations.

b. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved such as the number of runaway and homeless youth and their families to be served.

c. Identify the kinds of data to be collected and discuss how the project will maintain adequate statistical records profiling the youth and families served and the procedures that are or will be employed to ensure the confidentiality of this information.

6. *Organizational Capability.* (5 pages maximum, excluding position descriptions or résumés)

Provide an organizational chart and describe the following: How the program is staffed; how staff are selected, supervised and trained; how the organization ensures 24-hour accessibility to its services and an adequate youth/adult staff ratio at all times. Discuss the extent to which the program has defined specific roles for youth in planning, policy, decision making and service delivery.

a. Provide position descriptions and résumés for key positions in the program (e.g., the Executive Director, Counseling Supervisor), and a listing of board members, as applicable. Describe how the organization involves other members of the community and State in its program. Demonstrate that the organization has legal and fiscal viability in accordance with the provisions of the CFR, Title 45, Part 74.

b. Describe the recruitment, training and utilization efforts for volunteers in the organization, including the roles volunteers may have in service delivery, outreach in the community, and as members of the Board of Directors or advisory group.

7. *Plans and Assurances.* Applicants should provide a statement evidencing that they will comply with the program requirements provided in the Code of Federal Regulations, Title 45, Part 1351.

Closing Date for Receipt of Applications

The closing date for receipt of applications under this announcement is April 16, 1984. Applications must be mailed or hand delivered to: HHS/Division of Grants and Contracts Management, 330 Independence Avenue, SW., Washington, D.C. 20201, Room 1740. Attention: ACYF/YDB 841.

Mailed applications. Applications mailed through the U.S. Postal Service shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent by first class mail, postmarked on or before the deadline date, and received in time for submission to the independent review group. (Applicants are cautioned to request a legible U.S. Postal Service postmark or to use express mail or certified or registered mail and obtain a legibly dated mailing receipt from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Applications submitted by other means. Applications submitted by any means except mailing first class through U.S. Postal Service shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date.

Late applications. Applications which do not meet these criteria are considered late applications and will not be considered in the current competition.

Part III: Coordinated Networking Grants

A. Background Information

In FY 1984, a special emphasis is being placed on strengthening the coordination of resources and services to runaway and homeless youth and their families. Approximately, 30 to 44 grants will be awarded under the Coordinated Networking Grants activity. Applicants may be established networks or networks to be established in response to the requirements of this program announcement. All applications received in response to this section of the announcement will be competitively reviewed and evaluated on a national basis. Coordinated networks of agencies means an association of two or more nonprofit, private agencies whose purpose is to develop or strengthen services to runaway or otherwise homeless youth and their families. All grantees shall be required to document in program reports, through descriptive summaries, the specific outcomes of the networking activities supported by this grant.

Described below are the requirements and instructions for submitting grant applications under this seciton (Part III—Coordinated Networking Grants) of the FY 1984 Runaway and Homeless Youth Program Announcement.

Approximately $825,000 will be available to support grants under this section of the announcement. It is expected that grant awards will range from $10,000 to $55,000. However, the specific range for each priority area may vary. This is discussed in Section C.

The project periods for all networking grants funded under this announcement will be 12 months or less.

B. Eligible Applicants

Coordinated networks of agencies are eligible to apply for a Coordinated Networking Grant if they are not a part of the law enforcement structure or the juvenile justice system.

A coordinated network of agencies is defined as an association of two or more nonprofit, private agencies whose purpose is to develop or strengthen services to runaway or homeless youth and their families. Networks may be local, State-wide or regional in nature.

C. Priority Areas-Overview

Using recent evaluative studies and program monitoring data, ACYF/YDB has identified three areas in which network strengthening and development activities are critically needed. A networking approach to these problem areas would offer a unique opportunity to successfully meet the long-term needs of runaway and homeless youth beyond temporary shelter care. Most often, shelters are dependent on the responsiveness and resources of the existing service delivery systems to meet long-term service needs. The coordination and development of new resources is a demanding effort. Runaway and homeless youth centers need assistance in these efforts since so much of their resources are directed toward the crisis and intervention services they are called upon to deliver. During FY 1984, YDB is supporting the implementation of coordinated service approaches by awarding grants under three (3) discrete program priority areas which address the long-term needs of runaway and homeless youth and their families.

The three program priority areas are structured in a manner which reflects the need to improve service delivery systems in terms of local response, State roles and center-oriented problem solving support:

1.0 *Networking Community Resources To Meet the Needs of the Older Runaway and Homeless Youth.*

1.1 Long and Short-Term Placements
1.2 Developing Family Support Networks

2.0 *Coordinated Networking To Expand the State Role in Meeting the Needs of Runaway and Homeless Youth.*

2.1 Statewide Outreach Systems
2.2 Shelter Linked Employment Training and Job Placement
2.3 Aftercare Systems
2.4 Counting and Reporting Runaway and Homeless Youth
2.5 Structured Care Placement Options

3.0 *Networking for Center[1] Oriented Problem Solving Support—Long- and Short-Term.*

3.1 Alternative Funding Sources
3.2 Aftercare Systems
3.3 Case Planning and Management
3.4 Evaluating Programs
3.5 Crisis Intervention Techniques
3.6 Fiscal Management Skills
3.7 Recognizing and Providing for Learning Disabled and Handicapped Youth

D. Descriptions of Priority Area

1.0 *Networking Community Resources To Meet the Needs of the Older Runaway and Homeless Youth.*

1.1 *Long- and Short-Term Placements.* Greater and more coordinated effort is needed to develop better and more long- and short-term placement options for the older runaway and homeless youth. Seventy percent of runaway and homeless youth remain in their local communities. Eleven percent go out of their county of residence but not out of State. A greatly increased proportion of these runaway and homeless youth are older adolescents. Approximately one-third of all youth who received services from YDB-funded centers during FY 1983 were homeless. At the same time, there are apparently serious gaps in available foster care, residential homes, group homes and long-term therapeutic placements which are appropriate to meet the more acute needs of this population.

ACYF will award grants to support the convening of experts and community leaders such as school officials, juvenile court personnel, social service agency personnel and other public and private community-based organizations to collectively address this problem in the local community. Major issues to be addressed would include community responses to: Short- and long-term placement, transitional living for youth nearing emancipation; emergency mental health support systems. The runaway and homeless youth centers in the nucleus of each community should work with other local community organizations to develop the content of the meetings. The purpose of the grants under this section will be to increase and diversify the short- and long-term community-based placement options for the older runaway and homeless adolescent.

1.2 *Developing Family Support Networks.* In terms of long-range solutions, the most often cited need by service providers is to strengthen family relationships. Weakening of the traditional family structure through separation, divorce, poverty and high mobility is a major contributing factor to, if not the cause of, runaway behavior and homeless youth. Family support networks have demonstrated effectiveness in helping families cope with the various stresses brought about by the weakening of the family structure. They have been particularly helpful in providing aftercare support services following the reunification of a youth with his or her family. Family support networks also appear to be an effective mechanism for the prevention of the runaway behavior and/or the homeless state of older adolescents.

Applications are invited from local coordinated networks in partnership with other public and private community-based organizations for the development and strengthening of local family support networks which address both the short- and long-term needs of the older, homeless adolescent.

ACYF will award 10–12 grants in this priority area. Grants will range from $8,000 to $10,000 and will require a 10 percent match. The total amount of funds available under Priority I is $100,000. Applications should address either activity described.

2.0 *Coordinated Networking to Expand the State Role in Meeting the Needs of Runaway and Homeless Youth.* Runaway and homeless youth serving agencies and networks of such agencies, are invited to explore a more effective role with the States in developing and strengthening services to runaway and homeless youth. Particular areas of concern are in the development of Statewide outreach and prevention activities; the targeting of training and job placement opportunities; the development of aftercare systems that assure the provision of needed services following a youth's return home or placement in alternative living arrangements; and working with State legislatures across program jurisdictional lines to bring increased attention to the problems of youth within each State. Coordinated networks are encouraged to work together with States under this section to stimulate interactions between States and runaway and homeless youth service providers to improve overall service provision.

ACYF will also support applications that address the issue of runaway and homeless youth who are currently unreported by their families and/or uncounted by any official system. This includes possibly one million youth. The magnitude of the problem within a State requires a more accurate assessment before effective prevention and outreach strategies can be developed. Applications should address one or more of the following purposes:

2.1 *Statewide Outreach.* This area includes improving the various public and private State systems' involvement in helping identify and alleviate

[1] Federally and Non-Federally Supported Centers.

problems that contribute to runaway behavior or being homeless. These systems include but are not limited to schools, health and health education, recreation, welfare, social services, civic organizations, day care, juvenile justice, retail stores, churches, hotel associations, unions, and public media. Special emphasis should be placed on unserved areas in the State.

2.2 *Employment Training/Job Placement.* States support and manage different job programs for vulnerable youth. Training and job placement components are essential to the success of independent living models. ACYF will support grants that address the development of stronger linkages between State job training and placement programs and runaway and homeless youth service providers. Training and job placement slots should be linked to shelters for runaway and homeless youth, especially those with independent living models.

2.3 *Aftercare Systems.* Aftercare consists of counseling services to runaway and homeless youth and their parents or guardians following a youth's return home or placement in alternative living arrangements. The purpose of aftercare is to assist in alleviating the problems that contribute to runaway behavior or being homeless. Different youth serving programs within a State service system such as foster care, residential care and treatment, and juvenile justice recognize the need for aftercare. About half of the runaway youth are estimated to have a realistic prospect for family reunification or long-term stable foster placement (e.g., independent living arrangements, group homes). In the opinion of experts in the field, the success of this reunification is largely dependent on the availability of strong aftercare services (e.g., independent living training, long-term counseling). Aftercare systems are expensive and hard to establish. They involve many different disciplines and cut across a number of different service delivery systems. ACYF/YDB will support grants that provide for State participation in developing and coordinating State-wide efforts to address this issue.

2.4 *Counting and Reporting.* Many runaway and homeless youth are uncounted by any official system or survey. It is difficult to track and count persons who have no permanent address, particularly youth with no work history or Social Security number, and who may be inclined to conceal their real names. Police and juvenile probation personnel consistently advise that only one in four or five runaway/homeless youth whom they see is ever arrested, detained or officially counted and that many runaways are not reported as missing by their parents. Other studies have found that only one in six runaways is reported as missing by parents or guardians. Again, state participation could play a vital role in developing and coordinating better reporting and counting of runaway and homeless youth in their States and region.

2.5 *Structured Care Placement Options for the Older Adolescent.* Many practitioners and experts agree that today's runaway and homeless youth are a more complex and more troubled group than previously acknowledged. "Tougher," "more severe," "more long-term problems," "more abuse," and "more running from something instead of to something" are the most common descriptions used. Several New York City shelters recently participated in a study not yet published which found that about 80 percent of the runaway and homeless youth sampled were depressed or in poor mental health, as measured against an accepted medical standard. Respondents of another recently completed study indicate that about 25 percent of the clients are "street kids" in serious trouble, of which more than half engage in some type of criminal activity and half in prositiution.

Many shelter staff particularly cite the lack of safe placement options. They see the changes in the status offense laws as leaving runaway and homeless youth in a position to "fall between the cracks of service provision." Many runaway/status offenders are ignored, when what they need is to be stopped and placed in care for short-term stabilization whicle their needs can be investigated and options planned.

Problem factors in developing appropriate placement options for these youth include many of the following: difficulties in recruiting and licensing foster homes; the absence of special support systems (e.g. counseling) for difficult placements; the scarcity of alternative placements such as supervised transitional living arrangements; and education/training opportunities to prepare older youth for full emancipation. Leadership is needed to develop and coordinate efforts addressing the service gaps in safe placement options for older youth.

ACYF will award 10–12 grants under this priority area. It is expected that grants will range from $50,000 to $65,000. The estimated total funds available under this priority area is $525,000.

3.0 *Networking for Center-Oriented Problem Solving Support—Long and Short-Term.* Federally funded shelters and non-federally funded service providers experience periodic need for problem solving kinds of support in order to maintain and/or increase their capabilities to serve runaway and homeless youth and their families.

These needs are not necessarily related to major trends or established significant issues but are more oriented to the fluctuations of individual center program growth and development. Coordinated networks are excellent sources of such support.

Some of the priorities to be addressed by networking in this area shall include but are not limited to:

3.1 Development of alternative funding sources.

3.2 Aftercare systems.

3.3 Case management and planning.

3.4 Program evaluation.

3.5 Crisis intervention techniques.

3.6 Fiscal management skills.

3.7 Recognizing and providing for learning disabled and handicapped youth.

Applications should address one or more such areas, and should describe the support to be provided, justify the need, indicate whether the support is long-term or short-term, list the recipients, document the recipients' desire for such support, and describe how the cost-efficiency of the support provided will be measured.

It is anticipated that 10–20 grants will be awarded in this area with the range in size of grants being approximately $10,000–$25,000. The total amount available under this priority area is $200,000.

E. Available Funds

Approximately $825,000 will be available for Coordinated Networking Grants. ACYF expects to award between 30–44 such grants in FY 1984. Of the total amount, $100,000 will be available for 10–12 competing awards under Priority Area I–Networking Community Resources to meet the Needs of the Older Homeless Youth. Approximately $525,000 will be available for 10–20 competing grants under Priority Area II–Coordinated Networking to Expand the Role of the State in the Development of Services to Runaway and Homeless Youth. Approximately $200,000 will be available for 10–12 competing grants in Priority Area III–Networking for Center-Oriented Problem Solving Support—Short-Term, Long-Term.

Funds unexpended in one priority area will be reallocated to other priority areas and/or to the Basic Center Grant Program.

F. Grantee Share of the Project.

A ten percent match of the Federal dollars requested is required of all grants funded under this announcement. The non-Federal portion may be for grantee incurred costs or in-kind contributions (including the facility, equipment or services) and must be project-related and allowable under the cost principles as provided in 45 CFR Part 74, the Department's regulation on the Administration of Grants.

G. Review Criteria

All Coordinated Networking Grant applications must address a priority area. All applications must be complete and meet the deadline. They will be reviewed and evaluated against the following criteria:

Criterion 1: Responsiveness to Program Announcement

The applicant clearly identifies and addresses the priority area. The applicant documents the need for the proposed activities to be undertaken. (20 points)

Criterion 2: Soundness of Approach

A clear discussion of the feasibility of the proposed effort is provided. The ability of the applicant network to achieve the proposed objectives is described. The level of effort required is discussed and is adequate to conduct the proposed activities. A clearly stated workplan, staff loaded for task accomplishment is provided. (30 points)

Criterion 3: Budget Appropriateness and Reasonableness

The proposed budget is commensurate with the level of effort needed to accomplish the proposed objectives. The cost of the proposed activity is reasonable in relation to the value of the anticipated results. The contribution of the collaborative agencies or organizations is assured in writing and included with the application when it is submitted. The participation of an agency other than the applicant, if critical to the proposed effort, is evidenced by a letter indicating agreement to participate. (15 points)

Criterion 4: Staffing and Management

The proposed staff are well qualified to carry out the proposed activity. The division of responsibilities is appropriate to carry out workplan tasks. The applicant's facilities and/or staff available to achieve the proposed objectives are adequate. (15 points)

Criterion 5: Identified Outcomes

The identification of specific quantifiable outcomes (i.e., an increase in the number of placement options for older homeless youth; public education/public media; involvement in Statewide outreach/prevention efforts; problem-solving support in case planning and management provided to "x" number of shelters; and family support networks developed serving "y" number of families). (20 points)

Total: 100 points.

H. Instructions for Completing Applications

1. *Application Requirements.* In order to expedite the processing of applications, applicants must follow the instructions provided explicitly. Each application package should include:

a. An original and a minimum of two additional copies of the application. While an original and two copies are required, five additional copies are requested in order to facilitate processing and review. No applicant will be penalized for submitting only the three required copies. Each copy should be stapled (back and front) in the upper left corner. The original copy of the application must have original signatures.

i. In addition, to facilitate the identification and review of these applications it is suggested that a special identifier be used on the front cover of the original and the copies. Mark the symbol "NET" in large letters with a red marker pen in the upper right hand corner. In order to facilitate handling, please do not use covers, binders or tabs. Three extra copies of SF 424 and three copies of the cover sheet/abstract stapled together apart from the copies of the application are requested.

ii. The special identifier, "NET", should be applied to the three extra copies of the SF 424 and abstract form as well. All applicants will be automatically notified of receipt and of the identification number assigned to their application. This number and the priority area must be referred to on all subsequent communication with ACYF concerning the application. If acknowledgement is not received within six weeks after the deadline date, please notify ACYF by telephone (202) 755-8208.

2. *Content of Application.* Each copy of the application must contain each of the following items in the order listed:

a. A Project Abstract Form.

b. A Standard Form (SF) 424, page 1.

c. Part II—Project Approval Information.

d. Part III—Budget Information.

e. Part IV—Project Narrative which includes:

i. A table of contents, including a listing of any appendices.

ii. Project narrative, no more than twenty-five pages long, single spaced and typewritten on one side only, completed according to instruction listed below.

iii. Organizational capability statement or materials, no more than two double-spaced typewritten pages. (See instructions below.)

f. HHS-SF441, Assurance of Compliance, Title VI, Civil Rights Act of 1964.

g. HHS-SF 641, Assurance of Compliance, Sec. 504, Rehabilitation Act of 1973, As Amended.

3. *Instructions for Preparing the Application.* For your convience, we have reprinted the forms and instructions for applying for Federal assistance from HDS programs as appendices A and B to this announcement. We suggest that you reproduce the forms and use them to prepare your application.

Prepare your application in accordance with the following instructions:

a. Project Abstract Form.

Please Complete the Project Abstract Form at Appendix A of the announcement. The completed form should be used as a cover sheet for your application. In order to facilitate handling, do not use covers, binders, or tabs.

b. Standard Form (SF) 424, page 1:

Except for items 6B, the SF 424 should be completed in accordance with the instructions contained in Appendix B.

Item 6.b. should be completed as follows: Type: "Runaway and Homeless Youth FY 1984 Coordinated Networking Grant Program" and the number of the priority area and topic under which the application is being submitted.

c. Instructions for Part II (self-explanatory).

d. Instructions for Part III—Budget Information.

Complete Part III in accordance with the instructions contained in Appendix B.

e. Part IV—Project Narrative.

Describe the activity you propose in response to this announcement. Your narrative (27 pages typed single-spaced maximum, on 8½" X 11" plain white bond with 1" margins on both sides) should provide information on how the application meets the review criteria. We strongly suggest that you follow these format and page limitations:

1. *Table of Contents.* Provide a Table of Contents including a listing of all appendices.

2. *Geographic Location.* (1 page, single spaced)

Describe the precise location(s) of the projected activity. Maps or other graphic aids may be attached.

3. *Priority Area, Objectives and Need for This Assistance.* (4 pages maximum, single spaced)

Clearly identify the priority area and provide a brief description of the activity being proposed, documenting the need for such an effort. These data must be documented by source. (1) Information should include data on the incidence of runaway and homeless youth in the geographic area to be served, where applicable; (2) the gaps in services available; (3) how services will be developed or strengthened; and (4) how the shelters will benefit.

4. *Results or Benefits Expected.* (2 pages maximum, single spaced)

This section should identify the results and benefits to be derived from the implementation of services to runaway and homeless youth and their families under this grant program. Specifically, the applicant should describe: the results or benefits anticipated in terms of clients served, the community-at-large, the State (for example: youth reunification with the family, independent living situations, aftercare services, reduction in delinquency, etc.). In addition, explain the criteria to be used to evaluate the results of successes of the project and to determine if the results and benefits identified are being achieved.

5. *Approach.* (20 pages maximum, single spaced, excluding timetables, charts, supporting documentation, postion description, listings or resumes)

i. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for this grant program. This section of the program narrative must describe the specific plan of action workplan. Specifically, the program narrative must address at a minimum the following: (1) The feasibility of the proposed effort; (2) the availability of the applicant to achieve the objectives proposed; (3) the level of effort required and person days loaded to task accomplishments; and (4) the criteria to be used to evaluate the results and successes of the project and to determine if the results and benefits identified in (e)(4) are being achieved.

ii. Provide an organizational chart and describe the following: the members of the network; The network governance; network staff or qualifications of staff to be hired for the proposed effort. Discuss how youth are involved in the network and the principle partners of the network in the proposed effort. Provide position descriptions and résumés for key persons. Describe how the network involves other members of the community and State in its program. Demonstrate that the network has legal and fiscal viability in accordance with the provisions of the Code of Federal Regulations, Title 45, Part 74.

6. *Plans and Assurances.* Applicants should provide a statement of assurance that they will comply with the program requirements provided n the Code of Federal Regulations, Title 45, Part 1351.

7. *Supporting Documentation.* Applicants may attach any additional materials, such as letters of support or agreement, news clippings, or descriptions of the program's participation in local, State or regional coalitions of youth service agencies, which would give further support to the application.

f. HHS-SF 441, Assurance of Compliance, Title VI, Civil Rights Act of 1964 (self-explanatory).

g. HHS-SF 641, Assurance of Compliance, Sec. 504, Rehabilitation Act of 1973, As Amended.

I. Closing Date for Receipt of Applications

The closing date for receipt of applications under this announcement is April 16, 1984. Applications must be mailed or hand delivered to: HHS/Division of Grants and Contracts Management, 330 Independence Avenue, SW., Washington, D.C. 20201, Room 1740. Attention: ACYF/YDB 841.

Mailed applications. Applications mailed through the U.S. Postal Service shall be considered as meeting the deadline if they either:

1. Received on or before the deadline date; or

2. Sent by first class mail, postmarked on or before the deadline date, and received in time for submission to the independent review group. (Applicants are cautioned to request a legible U.S. Postal Service postmark or to use express mail or certified or registered mail and obtain a legibly dated mailing receipt from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications submitted by other means. Applications submitted by any means except mailing first class through U.S. Postal Service shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date.

Late applications. Applications which do not meet these criteria are considered late applications and will not be considered in the current competition.

Regional Program Directors, Administration for Children, Youth and Families

Region I, Mr. Richard Stirling, Regional Program Director, Office of Human Development Services, John F. Kennedy Federal Building, Room 2011, Boston Massachusetts 02203 (VT, CT, ME, NH, RI, MA), Attention: Ms. Susan Rosen (617-233-6450)

Region II, Mr. Dennis Coughlin, Acting Regional Program Director, Office of Human Development Services, 26 Federal Plaza, Room 4149, New York, New York 10278 (NY, NJ, PR, VI), Attention: Ms. Estelle Haferling (212-264-1329)

Region III, Mr. Alvin Pearis, Regional Program Director, Office of Human Development Services, 3535 Market Street, Post Office Box 13714, Philadelphia, Pennsylvania 19101 (DE, DC, MD, VA, WV, PA), Attention: Ms. Mary Williams (215-596-0319)

Region IV, Mr. John Jordan, Regional Program Director, Office of Human Development Services, 101 Marietta Tower, Suite 903, Atlanta Georgia 30323 (AL, FL, GA, KY, MS, NC, SC, TN), Attention: Mr. James Shelton (404-221-2128)

Region V, Mr. German White, Regional Program Director, Office of Human Development Services, 300 South Wacker Drive, Chicago, Illinois 60606 (IL, IN, MN, OH, WI, MI) Attention: Mr. John M. Kelly (312-353-6514)

Region VI, Mr. Tommy Sullivan, Regional Program Director, Office of Human Development Services, 1200 Main Tower, 20th Floor, Dallas, Texas 75202 (LA, NM, OK, TX, AR), Attention: Mr. Jerry Mabe (214-767-6596)

Region VII, Mr. Hilton Baines, Regional Program Director, Office of Human Development Services, Federal Office Building, Room 384, 601 East 12th Street, Kansas City, Missouri 64106 (IA, KS, MO, NE), Attention: Mr. Robert Mead (816-374-7342)

Region VIII, Mr. David Chappa, Regional Program Director, Office of Human Development Services, 1961 Stout Street, Federal Office Building, 9th Floor, Denver, Colorado 80294 (CO, MT, ND, SD, UT, WY), Attention: Mr. Juan Cordova (303-837-3108)

Region IX, Mr. Roy Fleischer, Regional Program Director, Office of Human Development Services, 50 United Nations Plaza, San Francisco, California 94102 (AZ, CA, HI, NV, GU, AS, TT), Attention: Mr. Ray Myrick (415-556-6153)

Region X, Mr. William Hayden, Regional Program Director, Office of Human Development Services, 2901 Third Avenue, Mail Stop 503, Seattle, Washington 98121 (AK, ID, OR, WA), Attention: Mr. Lee Koenig (206-442-0838)

Executive Order 12372—State Single Points of Contact

Arizona

Office of Economic Planning and Development, State of Arizona, Executive Tower, Room 505, 1700 W. Washington Street, Phoenix, Arizona 85007, Tel. (602) 255-4331.

Arkansas

State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371-2311.

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 445-0282.

Colorado

State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Tel. (303) 866-2156.

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106-4459.

Note.—Correspondence & questions concerning this state's E.O. 12372 process should be directed to: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459, Tel. (203) 566-4298.

Delaware

Marna C. Whittington, Director of the Budget Office, P.O. Box 1401, Dover, Delaware 19903, Tel. (302) 736-4101.

Florida

Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488-8114.

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Tel. (404) 656-3855.

Hawaii

Mr. Kent M. Keith, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804. For Information Contact: Hawaii State Clearinghouse, Tel. (808) 548-3085.

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782-8639.

Indiana.

Ms. Susan J. Kennell, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232-5604.

Iowa

Office for Planning and Programming, Capital Annex, 523 East 12th Street, Des Moines, Iowa 50319, Tel. (515) 281-6483.

Kansas

Kansas Department of Human Resources, Office of The Secretary, Attention: Judy Krueger, 401 Topeka Avenue, Topeka, Kansas 66603, Tel. (913) 296-5075.

Kentucky

Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564-2382.

Louisiana

Wallace L. Walker, Executive Director, Louisiana State Planning Office of the Governor, P.O. Box 44426, Baton Rouge, Louisiana 70804, Tel. (504) 342-7410.

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Tel. (301) 383-7875.

Massachusetts

Executive Office of Communities and Development, 100 Cambridge Street, Room 1401, Boston, Massachusetts 02202, Tel. (617) 727-3264.

Michigan

Carol Hoffman, Director, Office of Business and Community Development, Michigan Department of Commerce, P.O. Box 30004, Lansing, Michigan 48909, Tel. (517) 378-8363.

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 1504 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202. For Information Contact: Mr. Rich Haydel, Department of Planning and Policy, Tel. (601) 359-3089.

Minnesota

Thomas N. Harren, Minnesota State Planning Agency, Capitol Square Building—Room 101, 550 Cedar Street, St. Paul, Minnesota 55101, Tel. (612) 296-3698.

Missouri

Missouri Federal Assistance Clearinghouse, Office of Administration, Division of Budget and Planning, Room 129 Capitol Building, Jefferson City, Missouri 65102, Tel. (314) 751-4834 or 751-2345.

Montana

Manager, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 449-3111, x58.

Nebraska

Policy Research Office, P.O. Box 94601, Room 1321, State Capitol, Lincoln, Nebraska 68509, Tel. (402) 471-2414.

Nevada

Ms. Linda A. Ryan, Director, Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885-4420.

New Hampshire

David G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271-2155.

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West Street, Trenton, New Jersey 08625, Tel. (609) 292-6613.

New Mexico

Peter C. Pence, Director, Department of Finance and Administration, State of New Mexico, 515 Don Gaspar, Santa Fe, New Mexico 87503, Tel. (505) 827-3885.

New York

Director of the Budget, New York State.

Note.—Correspondence & questions concerning the state's E.O. 12372 process should be directed to: New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474-1605.

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733-4131.

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215. For Information Cointact: Mr. Leonard E. Roberts, Deputy Director, Tel. (614) 466-0699.

Oklahoma

Office of Federal Assistance Management, 4545 North Lincoln Blvd., Oklahoma City, Oklahoma 73105, Tel. (405) 528-8200.

Oregon

Intergovernmental Relations Division, State Clearinghouse, Executive Building, 155 Cottage Street, N.E., Salem, Oregon 97310, Tel. (503) 373-1993.

Pennsylvania

Pennsylvania Intergovernmental Council, P.O. Box 1288, Harrisburg, Pennsylvania 17108. ATTN: Charles Griffiths, Executive Director, Tel. (717) 783-3700.

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277-2656.

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Tel. (803) 758-2417.

South Dakota

Jeff Stroup, Commissioner of the Bureau of Intergovernmental Relations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773-3661.

Tennessee

Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (615) 741-1676.

Texas

Bob McPherson, State Planning Director, Office of the Governor, Office of the

Governor, Austin, Texas 78711, Tel. (512) 475-6156.

Utah

Michael B. Zuhl, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533-5245.

Vermont

State Planning Office, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828-3326.

Virginia

Robert H. Kirby, Intergovernmental Review Officer, Department of Planning and Budget, Post Office Box 1422, Richmond, Virginia 23211, Tel. (804) 786-1921.

Washington

Washington Planning and Community Affairs Agency, North and Columbia Building, Olympia, Washington 98504, Tel. (206) 753-2200.

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Economic and Community Development, Building #6, Room 553, Charleston, West Virginia 25305, Tel. (304) 348-4010.

Wisconsin

Secretary Doris J. Hanson, Wisconsin Department of Administration, 101 South Webster Street—GEF 2, Madison, Wisconsin 53702, Tel. (608) 266-1212.

Wyoming

Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777-7574.

Virgin Islands

Federal Programs Office, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801.

District of Columbia

Pauline Schneider, Director, Office of Intergovernmental Relations; Room 416, District Building, Washington, D.C. 20004, Tel. (202) 727-6266.

Puerto Rico

Nelson Soto, President, Puerto Rico Planning Board, P.O. Box 4119 Minilla Station, San Juan, Puerto Rico 00940, Tel. (202) 727-6265.

Northern Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, CM 96950.

(Catalog of Federal Domestic Assistance Program Number 13623, Runaway and Homeless Youth Program)

Dated: February 23, 1984.

Joseph A. Mottola,

Acting Commissioner, Administration for Children, Youth and Families.

Approved: February 24, 1984.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

BILLING CODE 4130-01-M

Appendix A

Runaway and Homeless Youth Grant

Project Abstract Form

Using this format, please provide the following information, not exceeding one page. Attach the original and two copies to the front of the application that contains the original signatures. Attach one copy to the front of the other sets of applications you submit.

a. Type of Grant:_____Basic Center_____Networking
_____Priority Area

b. Name of Applicant:

c. Address:

d. City/State/Zip Code:

e. Phone Number: ( )

f. Congressional District(s) Served:

g. Estimated No. of Clients to be Served:
Youth _____
Families_____

h. Principal Population Area Served:
_____Urban
_____Suburban
_____Rural

i. Requested Funding Level: Federal $_____
Non-Federal $_____
Total $_____

j. Proposal Summary: Provide a 200 word maximum synopsis of your (proposed) program, including objectives, special needs, approach, expected outcomes, or other pertinent information. In the Basic Center applications, this should highlight special program emphases beyond the services mandated by the Act (e.g., independent living, job training/placement, linkages with the schools, prevention and outreach). In the Networking applications, the summaries should highlight the priority area and subtopic being addressed, the activity proposed, the need for the proposed activity, the objectives and approach and outcomes to be achieved.

Appendix B

OMB Approval No. 29-R0218

FEDERAL ASSISTANCE

SECTION I—APPLICANT/RECIPIENT DATA

1. TYPE OF ACTION (Mark appropriate box)
- ☐ PREAPPLICATION
- ☐ APPLICATION
- ☐ NOTIFICATION OF INTENT (Opt.)
- ☐ REPORT OF FEDERAL ACTION

2. APPLICANT'S APPLICATION — a. NUMBER; b. DATE Year month day 19; Leave Blank

3. STATE APPLICATION IDENTIFIER — a. NUMBER; b. DATE ASSIGNED Year month day 19

4. LEGAL APPLICANT/RECIPIENT
- a. Applicant Name :
- b. Organization Unit :
- c. Street/P.O. Box :
- d. City :
- e. County :
- f. State :
- g. ZIP Code:
- h. Contact Person (Name & telephone No.) :

5. FEDERAL EMPLOYER IDENTIFICATION NO.

6. PROGRAM (From Federal Catalog) — a. NUMBER; b. TITLE

7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT

8. TYPE OF APPLICANT/RECIPIENT
A-State; B-Interstate; C-Substate District; D-County; E-City; F-School District; G-Special Purpose District; H-Community Action Agency; I-Higher Educational Institution; J-Indian Tribe; K-Other (Specify):
Enter appropriate letter ☐

9. TYPE OF ASSISTANCE
A-Basic Grant; B-Supplemental Grant; C-Loan; D-Insurance; E-Other
Enter appropriate letter(s) ☐☐

10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.)

11. ESTIMATED NUMBER OF PERSONS BENEFITING

12. TYPE OF APPLICATION
A-New; B-Renewal; C-Revision; D-Continuation; E-Augmentation
Enter appropriate letter ☐

13. PROPOSED FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. TOTAL	$ .00

14. CONGRESSIONAL DISTRICTS OF: a. APPLICANT; b. PROJECT

15. TYPE OF CHANGE (For 12c or 12e)
A-Increase Dollars; B-Decrease Dollars; C-Increase Duration; D-Decrease Duration; E-Cancellation; F-Other (Specify):
Enter appropriate letter(s) ☐☐☐

16. PROJECT START DATE Year month day 19

17. PROJECT DURATION Months

18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY ▶ Year month day 19

19. EXISTING FEDERAL IDENTIFICATION NUMBER

20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT ▶
a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.
b. If required by OMB Circular A-95 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached:

	No response	Response attached
(1)	☐	☐
(2)	☐	☐
(3)	☐	☐

23. CERTIFYING REPRESENTATIVE — a. TYPED NAME AND TITLE; b. SIGNATURE; c. DATE SIGNED Year month day 19

SECTION III—FEDERAL AGENCY ACTION

24. AGENCY NAME

25. APPLICATION RECEIVED Year month day 19

26. ORGANIZATIONAL UNIT

27. ADMINISTRATIVE OFFICE

28. FEDERAL APPLICATION IDENTIFICATION

29. ADDRESS

30. FEDERAL GRANT IDENTIFICATION

31. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. DEFERRED
- ☐ e. WITHDRAWN

32. FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. TOTAL	$ .00

33. ACTION DATE ▶ Year month day 19

34. STARTING DATE Year month day 19

35. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

36. ENDING DATE Year month day 19

37. REMARKS ADDED ☐ Yes ☐ No

38. FEDERAL AGENCY A-95 ACTION
a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provisions of Part 1, OMB Circular A-95, it has been or is being made.
b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.)

STANDARD FORM 424 PAGE 1 (10-75)
Prescribed by GSA, Federal Management Circular 74-7

OMB NO. 80-R0 185

PART II

PROJECT APPROVAL INFORMATION

Item 1.
Does this assistance request require State, local, regional, or other priority rating?
_____Yes _____No

Name of Governing Body _____
Priority Rating _____

Item 2.
Does this assistance request require State, or local advisory, educational or health clearances?
_____Yes _____No

Name of Agency or Board _____
(Attach Documentation)

Item 3.
Does this assistance request require clearinghouse review in accordance with OMB Circular A-95?
_____Yes _____No

(Attach Comments)

Item 4.
Does this assistance request require State, local, regional or other planning approval?
_____Yes _____No

Name of Approving Agency _____
Date _____

Item 5.
Is the proposed project covered by an approved comprehensive plan?
_____Yes _____No

Check one: State ☐
Local ☐
Regional ☐
Location of Plan _____

Item 6.
Will the assistance requested serve a Federal installation?
_____Yes _____No

Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 7.
Will the assistance requested be on Federal land or installation?
_____Yes _____No

Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 8.
Will the assistance requested have an impact or effect on the environment?
_____Yes _____No

See instructions for additional information to be provided.

Item 9.
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?
_____Yes _____No

Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 10.
Is there other related assistance on this project previous, pending, or anticipated?
_____Yes _____No

See instructions for additional information to be provided.

OMB NO. 80-R0186

PART III – BUDGET INFORMATION

SECTION A – BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6. Object Class Categories	– Grant Program, Function or Activity				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	$	$	$	$	$
7. Program Income	$	$	$	$	$

OMB NO. 00-R0186

SECTION C – NON-FEDERAL RESOURCES

(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS	$	$	$	$

SECTION D – FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL	$	$	$	$	$

SECTION E – BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS	$	$	$	$

SECTION F – OTHER BUDGET INFORMATION

(Attach additional Sheets If Necessary)

21. Direct Charges:

22 Indirect Charges:

23. Remarks:

PART IV PROGRAM NARRATIVE (Attach per instruction)

PART V

ASSURANCES

The Applicant hereby assures and certifies that he will comply with the regulations, policies, guidelines and requirements, including OMB Circulars No. A—95, A—102 and FMC 74—4, as they relate to the application, acceptance and use of Federal funds for this federally-assisted project. Also the Applicant assures and certifies to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.

5. It will comply with the provisions of the Hatch Act which limit the political activity of employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local governments.

7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.

9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listd on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office of Human Development Services

OMB 0980-0016
EXPIRES: 2/85

Instructions for Applying for Federal Assistance from HDS Programs

Introduction

Use of Forms

The forms included in this "kit" shall be used to apply for all new discretionary grants and cooperative agreements awarded by the Office of Human Development Services. They shall also be used to request supplemental assistance, proposed changes or amendments, and request continuation or refunding for previously approved grants or cooperative agreements from the Office of Human Development Services. An original and two copies of the forms should be submitted to the responsible grants management office. If an item cannot be answered or does not appear to be related or relevant to the assistance required, write "NA" for not applicable.

Applications

Applicants for new awards and competing continuations are required to submit a complete application which consists of Parts I (SF-424) through Part V. Applicants for new projects must include completed Standard Forms 441, Civil Rights Assurance and HHS—641 Rehabilitation Act Assurance. Applicants for additional funding (such as a continuation or supplemental grant) or amendments to a previously submitted application should include only affected pages. Previously submitted pages whose information is still current need not be resubmitted. Additionally, applicants for certain HDS programs may be subject to the EO 12372 clearance process. Therefore, applicants must follow the instructions provided relative to EO 12372 coverage where appropriate.

Submission of Applications

(1) Continuation Grants—Applicants for continuation grants must submit these forms not later than 90 days prior to the budget period end date.

(2) New Projects and Competing Continuations—Applicants for Assistance to support new projects or for competing extensions should refer to program announcements for information regarding deadline dates for submission of forms.

INSTRUCTIONS FOR COMPLETION OF PART I (SF-424)

Section I

Applicants shall complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk (*) and use the remarks section.

Item

1. Mark "Application Box" when used as a grant application. - The applicant, unless otherwise advised by the State Point of Contact, shall use the SF-424 as a notification of intent to apply for Federal Assistance in accordance with procedures established by these offices. When used for this purpose, mark "Notification of Intent".

2a. Applicant's own control number if desired.

2b. Date Section I is prepared.

3a. For a program covered by Executive Order 12372, enter the number assigned, if any, by the State Point of Contact Office. Applications submitted to OHDS must contain this identifier, if provided by the State Point of Contact, and must also include a certification statement that the application was submitted to the State Point of Contact. A certification form is provided in this application package.

3b. Date applicant notified of clearinghouse identifier.

4a.-4h. Enter legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, name and telephone number of person who can provide further information about this request.

5. Enter employer identification number of applicant as assigned by Internal Revenue Service. If the applicant organization has been assigned a DHHS entity number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full entity number. If applicant has other grants with DHHS and has been assigned a payee identification number, enter PIN in parenthesis () beside employer identification number.

6a. Enter the Catalogue of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one person (e.g., joint funding) enter "multiple" and explain in remarks. If unknown, cite Public Law or U.S. Code.

6b. Enter the program title from Catalog of Federal Domestic Assistance. Abbreviate if necessary.

7. Enter a title and appropriate description of project. For notification of intent, continue in Remarks Section if necessary to convey proper description.

8. Enter appropriate letter to designate grantee type—"City" includes town, township or other municipality. If the grantee is other than that listed, specify type on "Other" line e.g., Council of Government. *Note:* Nonprofit organizations which have not previously received HDS program support must submit proof of nonprofit status.

9. All applicants for HDS discretionary grant funds should enter the letter "A".

10. Enter Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit affected, list it rather than subunits.

11. Identify estimated number of persons *directly* benefiting from project, as described in the program narrative.

12. Enter appropriate letter. Definitions are:

a. New. A submittal for the first time for a new project or project period (includes competing continuations).

b. Renewal. Not applicable to HDS grant programs.

c. Revision. A modification to project after the initial funding/budget period and within the approved project period.

d. Continuation. Support for a project after the initial funding/budget period and within the approved project period.

e. Augumentation. (Referred to elsewhere in these instructions and in other HDS publications as a "supplement"). An application for additional funds for a period previously awarded funds in the same funding/budget period.

13. Enter amount requested or to be contributed during the intial funding/budget period by each contributor. Where allowable the value of in-kind contributions will be included. If the action is a change in dollar amount of existing grant (a revision or augumentation), indicate only the amount of change. For decreases, enclose the amount in paretheses. For multiple program funding use totals and show program breakdowns in remarks. Item definitions: 13a, amount requested from Federal Government; 13b, amount applicant will contribute; 13c, amount from State, if applicant is not a State; 13d, amount from local government, if applicant is not a local government; 13e, amount from any other sources, explain in remarks. Note: Applicants for research grant should complete 13a and 13f only.

14a. Self explanatory.

14b. Enter the district(s) where most of actual work will be accomplished. If city-wide or State-wide covering several districts, write "City-wide" or "State-wide".

15. Complete only for revisions (item 12c), or augumentations (Supplements) (Item 12e).

16. Enter approximate date project is expected to begin. If initial budget period is other than 12 months, check item 21 and explain in Part IV.

17. Enter estimated number of months to complete project after Federal funds are available.

18. Estimated date application will be submitted to Federal agency (HDS program office) if this project requires clearinghouse review. If review is not required, this date would usually be same as date in item 2b.

19. Enter existing Federal grant number if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA".

20. Indicate Federal agency to which this request is addressed. Street address not required, but do use ZIP.

21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached.

Section II

Applicants shall always complete items 23a, 23b, and 23c. An explanation follows for each item.

23a. Name and title of authorized representative of legal applicant.

23b. Self explanatory. *Note:* Authorized representative signature cannot be signed by designee.

23c. Self explanatory.

Note: APPLICANT COMPLETES ONLY SECTIONS I AND II. SECTION III IS COMPLETED BY FEDERAL AGENCIES.

Instructions for Completion of Part III

This form is designed so that application can be made for funds to support one or more functions or activities. Generally, HDS funded programs do not require a breakdown by function or activity. Therefore, only Line 1 need be completed. However, Head Start, funded by the Administration for Children, Youth and Families requires that activities commonly identified by program accounts be displayed separately on individual lines (Lines 1-4 under Section A and Columns 1-4 under Section B).

Since HDS programs award funds to support activities for budget periods which are generally 12 months in duration, Section A, B, C, and D must provide budget information for the requested budget period. Section E should present the need for Federal assistance in subsequent budget periods.

Applicants for research grants are not required to complete information items related to non-Federal share. Rather, research cost sharing shall be negotiated separately with the funding office.

Section A—Budget Summary
Lines 1-4

Col. (a): For applications pertaining to a single grant program and *not* requiring a functional, activity or program account breakout enter on Line 1 under Column (a) the Federal Domestic assistance Catalog program title (See attached listing). For "Head Start", enter the activities (program accounts) name and number for which funds are being requested on separate lines.

Col. (b): Enter appropriate Catalog of Federal Domestic Assistance number. For "Head Start", enter the activities (program accounts) name and number for which funds are being requested on separate lines.

Col. (c)-(g): For *new applications,* leave Columns (c) and (d) blank. For each line entry, enter in Columns (e), (f), and (g) the appropriate amounts needed to support the project for the first budget period. Applicants for research grant should make no entries in Column (f).

For *continuation applications,* or *competing continuations,* enter in Columns (c) and (d) the estimated amounts for funds which will remain unobligated at the end of the current budget period. Enter in columns (e), (f), and (g) the appropriate amounts needed to support the project for the new budget period. (Applicants for research grants should make no entries in Columns (d) or (f). Column (g) should equal the total of Column (e) and Column (f).

For *augumentation* (supplements) *and changes to existing grants,* leave Columns (c) and (d) blank and enter in Columns (e) and (f) the amount of increase or decrease of Federal and non-Federal funds, as appropriate. Enter in Column (g) the new total budgeted amount (Federal and non-Federal) which includes the previously authorized total budgeted amounts for the current budget period plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Columns (g) should not equal the sum of the amounts in Columns (e) and (f). Applicants for research grants should make no entries in columns (d) or (f).

Line 5

Enter the totals for all columns completed.

Section B - Budget Categories

Column 1-5

In the Column heading (1) through (4), enter the same titles of the grant programs and/or program accounts shown on Lines 1 through 4, Column (a), Section A. For each grant program or activity (program account) entered in Columns (1) through (4) enter the total requirements for *Federal funds* by object class categories and enter total in Column 5.

Allowability of costs are governed by applicable cost principles set forth in Subpart Q of 45 CFR Part 74 and the HDS Grants Administration Manual.

Personnel—Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff. Do not include costs of consultants or personnel costs of delegate agencies. (See Section F, Line 21, for additional requirements).

Fringe Benefits—Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate. Provide a break-down of amounts and percentages that comprise fringe benefit costs.

Travel—Line 6c: Enter total costs of out-of-town travel for employees of the project. Do not enter costs for consultant's travel or local transportation. Provide justification for requested travel costs. (See Line 6h and Section F, Line 21, for additional instructions).

Equipment—Line 6d: Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property" means tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. An applicant may use its own definition of non-expendable personal property, provided that such a definition would at least include all tangible personal property as defined in the preceeding sentence. (See Section F, Line 21 for additional requirements).

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Contractual—Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.), and, (2) contracts with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. Attach a list of contractors indicating the name of the organization, the purpose of the contract and the estimated dollar amount of the award. If the Name of Contractor, Scope of work and estimated total is not available or has not been negotiated, include in Line h, "Other". (Note: Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must submit sections A and B of Part III, Budget Section, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total cost of all such agencies will be part of the amount shown on Line 6(f). Provide back-up documentation identifying Name of contractor, purpose of contract and major cost elements.

Construction—Line 6g: Enter the costs of renovation or repair. Provide narrative justification and break-down or costs. New construction is unallowable.

Other—Line 6h: Enter the total of all other costs. Such cost, where applicable, may include, but are not limited to, insurance, food, medical and dental costs, (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i: Show the totals of Lines 6(a) through 6(h).

Indirect Charges—Line 6j: Enter the total amount of indirect costs. If no indirect costs are requested enter "none". This line should be used only when the applicant (except local governments) has an indirect cost rate approved by the Department of Health and Human Services. If rate has recently been approved, please enclose a copy of current rate. Local governments shall enter the amount of indirect costs determined in accordance with HHS requirements. In the case of training grants to other than State or local governments, (as defined in 45 CFR Part 74), the reimbursement of indirect costs will be limited to the lesser of actual indirect costs or 8 percent of the amount allowed for direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alteration and renovations. It should be noted that when an indirect cost rate is requested, these costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Total—Line 6k: Enter the total amounts of Lines 6(i) and 6(j). For all new, continuation, and competing extension applications and total amount shown in Column (5), Line 6(k), should be the same as the amount shown in Section A, Column (e), Line 5.

For all supplements or changes, the total of the amount shown in Columns (1) through (4) should equal the amount shown in Section A, Line 5(e). The amount shown in Column (5) should include the cumulative total of the previously approved Federal share for the current budget period plus or minus, as appropriate, the increase or decrease of Federal funds.

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show, in the program narrative statement, the nature and source of income.

Section C—Non-Federal Resources

Line 8-11: Enter amounts of non-Federal resources that will be used to support the project. (Applicants for research grants should not complete this Section but will negotiate appropriate cost sharing arrangements with the funding office). Provide a brief explanation, on a separate sheet, showing the type of contribution, and whether it is in cash or inkind. If inkind, is allowable and included, show the basis for computation including:

(1) Numbers and types of volunteers and rates at which their services are valued;

(2) Valuation of donated space (use only) including number of square feet and value assigned per square foot; and

(3) Determination of depreciation and use allowance for grantee-owned space; [Include statement whether space was purchased or constructed, totally or in part with federal funds for item (2) and (3)].

(4) Type and value of other inkind contributions expected.

Column (a): Enter the program title or activities (program accounts) as in Column (a) Section A.

Column (b): enter the amount of cash and inkind contributions to be made by the applicant.

Column (c): Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant State agency.

Column (d): Enter the amount of cash and inkind contributions to be made from all other sources.

Column (e): Enter the totals of Columns (b), (c), and (d).

Line 12—Enter total of each of Columns (b) through (e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal cash needed for this grant, by quarter, during the budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the budget period. (Applicants for research grants should not complete this line).

Line 15—Enter the totals of amounts on Lines 13 and 14.

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

_____ (hereinafter called the "Applicant")
(Name of Applicant)

HEREBY AGREES THAT it will comply with title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 CFR Part 80) issued pursuant to that title, to the end that, in accordance with title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Dated_____ _____
(Applicant)

By_____
(President, Chairman of Board, or comparable authorized official)

_____

_____
(Applicant's mailing address)

HDS GRANTS MANAGEMENT

HHS-441 Return Original To: Office of Civil Rights, Room 5627/B North Building
330 Independence Ave. S.W.
Washington, D.C. 20201

Send Copy to Grants Management

DEPARTMENT OF HEALTH AND HUMAN SERVICES
ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

Pursuant to § 84.5(a) of the regulation [45 C.F.R. 84.5(a)], the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other federal financial assistance extended by the Department of Health and Human Services after the date of this Assurance, including payments or other assistance made after such date on applications for federal financial assistance that were approved before such date. The recipient recognizes and agrees that such federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in § 84.5(b) of the regulation [45 C.F.R. 84.5(b)].

The recipient: [Check (a) or (b)]

a. ( ) A73 employs fewer than fifteen persons;

b. ( ) A74 employs fifteen or more persons and, pursuant to § 84.7(a) of the regulation [45 C.F.R. 84.7(a)], has designated the following person(s) to coordinate its efforts to comply with the HHS regulation:

Name of Designee(s) – Type or Print
C12 C42

Name of Recipient – Type or Print
A12 A41

Street Address or P.O. Box
A42 A71

(IRS) Employer Identification Number
A1 A11
B1 B11
C1 C11

City
B12 B41

State
B42

Zip
B71

I certify that the above information is complete and correct to the best of my knowledge.

Date
B72 B77

Signature and Title of Authorized Official
B78

If there has been a change in name or ownership within the last year, please PRINT the former name below:

NOTE: The 'A', 'B', and 'C' followed by numbers are for computer use. Please disregard.

PLEASE RETURN ORIGINAL TO: Office for Civil Rights, Room 5627/B North Building
330 Independence Ave. S.W.
Washington, D.C. 20201

Send Copy to Grants Management
HDS GRANTS MANAGEMENT

HHS-641 (10/80)

EXECUTIVE ORDER 12372

STATE POINT OF CONTACT PROJECT NOTIFICATION CERTIFICATION

_____
Legal Organization Name

Has _____ or Has Not _____ Submitted This Application to the State Point of Contact Office.

Date Submitted to the State Office _____

_____ _____
Signature of Authorized Official Date

[FR Doc. 84-5478 Filed 2-29-84; 8:45 pm]
BILLING CODE 4130-01-C

federal register

Thursday
March 1, 1984

Part IV

Federal Trade Commission

16 CFR Part 444

Trade Regulation; Credit Practices; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 444

Trade Regulation Rule; Credit Practices

AGENCY: Federal Trade Commission.

ACTION: Final trade regulations rule.

SUMMARY: The Federal Trade Commission issues a final rule, the purpose of which is to restrict certain remedies used by lenders and retail installment sellers in consumer credit contracts. The remedies affected by this rule are: Confessions of judgment, waivers of exemption, wage assignments, security interests in household goods, and certain late charges. The rule further prohibits misrepresentations of cosigner liability and provides that potential cosigners be furnished a "Notice to Cosigner" which explains in general terms their obligations and liabilities.

This notice contains the rule's Statement of Basis and Purpose, incorporating a Regulatory Analysis, and the text of the final rule.

EFFECTIVE DATE: March 1, 1985.

ADDRESS: Requests for copies of the rule, the Statement of Basis and Purpose and Regulatory Analysis should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Christopher W. Keller, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580 (202) 724-1580.

SUPPLEMENTARY INFORMATION:

List of Subjects in 16 CFR Part 444

Consumer credit contracts, Cosigner disclosures, Trade practices, Truth in lending.

By direction of the Commission. Commissioner Calvani did not participate.

Dated: February 17, 1984.

Benjamin I. Berman,

Acting Secretary.

CREDIT PRACTICES RULE; STATEMENT OF BASIS AND PURPOSE AND REGULATORY ANALYSIS

I. History of the Proceeding

A. Introduction

This proceeding focuses on the relationship between consumers and the institutions from whom they seek and obtain credit for purposes other then the purchase of real estate. It originated as a result of: (1) An extensive survey conducted by the National Commission on Consumer Finance which examined the consumer credit market and reached a variety of conclusions based upon empirical data and econometric analysis;[1] and (2) an investigation of the consumer finance industry conducted by the Bureau of Consumer Protection from the Fall of 1972 until the Spring of 1974, to determine whether the use of certain collection remedies was an unfair practice under Section 5 of the FTC Act.[2]

The Commission published an Initial Notice of Rulemaking in the Federal Register on April 11, 1975.[3] Written comments were received through August 5, 1977. Comments were received from industry, consumers, legal services, state attorneys general, labor unions, consumer organizations and other interested parties. A Final Notice of Rulemaking was published on June 24, 1977, setting forth the time and places for public hearings on the proposed rule and enumerating 14 issues which the Presiding Officer designated under § 1.13(d)(1) of the Commission's Rules of Practice.[4] Hearings were conducted in Dallas, Texas; Chicago, Illinois; San Francisco, California; and Washington, D.C., from September 12, 1977, to January 30, 1978. Rebuttal submissions were received untill May 1, 1978.

The written comments, the materials placed on the record by the Presiding Officer and the Commission staff, the hearing transcripts and exhibits, and the rebuttal statements comprise the principal evidentiary record of this proceeding. After the receipt of rebuttal statements, reports to the Commission based on the rulemaking record were prepared by the Presiding Officer,[5] who made findings on designated issues, and by the Commission staff,[6] who summarized and analyzed the record evidence and made recommendations to the Commission for a revised Trade Regulation Rule. The Bureau of Economics also submitted comments and recommendations to the Commission for a revised rule.[7]

Pursuant to § 1.13(h) of the Commission's Rules of Practice, publication of the Final Staff Report initiated a sixty-day comment period which afforded the public an opportunity to comment on the reports of the Presiding Officer and the staff. This comment period was extended and closed on January 16, 1981. A summary of post-record comments was placed on the public record.

On April 14, 1983, the rulemaking staff's memorandum recommending a final modified proposed rule, and memoranda from the staff of the Bureau of Economics, and the Directors of the Bureaus of Consumer Protection and Economics were placed on the public record. On June 6 and 7, 1983, the Commission heard oral presentations from prior rulemaking participants who had been invited to present their views directly to the Commission as provided in § 1.13(i) of the Commission's Rules, 16 CFR 1.13(i).[8]

On June 13, 1983, the Commission met to consider whether to adopt a final rule, and if so, what form the rule should take. Although as to the rule as a whole no final determination was made during that meeting, the Commission deleted the provisions of the staff proposed rule concerning attorneys' fees and deficiency balances and directed the staff to draft proposed disclosures for the remaining provisions of the rule. The Commission further directed the staff to draft alternative proposals for a limitation on household goods security interests and third party contacts. The staff was instructed to draft a modified disclosure for cosigners. The Commission indicated tentative support for a ban on confessions of judgment and wage assignments. The Commission further indicated support for the late

[1] "Consumer Credit in the United States," *Report of the National Commission on Consumer Finance* (1972).

[2] Memorandum to Commission dated April 19, 1974.

[3] 40 FR 16347. This Notice contained a Statement of Reason for the Proposed Rule which set forth the legal theory applied to the acts and practices at issue in the proceeding, as well as a list of 12 questions which the Commission deemed particularly pertinent and upon which comment was specifically invited.

[4] 42 FR 32261, June 24, 1977.

[5] Report of the Presiding Officer on Proposed Trade Regulation Rule: Credit Practices, August 11, 1978 (hereinafter cited as "Presiding Officer's Report").

[6] Credit Practices Staff Report and Recommendation on Proposed Trade Regulation Rule 16 CFR Part 444, August 1980 (hereinafter cited as "Staff Report").

[7] Memorandum by Edward Manfield, Bureau of Economics, August 18, 1980.

[8] The participants were Commonwealth of Massachusetts, Department of the Attorney General; Credit Union National Association, Inc.; the Legal Aid Society of Cleveland; Professors James Barth and Anthony Yezer, George Washington University; National Automobile Dealers Association; American Financial Services Association. (Throughout the major portion of the proceeding this organization was denominated National Consumer Finance Association (NCFA) and will be so termed in relevant citations in this statement); Consumer Federation of America; George Wallace, Rutgers School of Law; Federal Reserve Board; American Retail Federation and National Retail Merchants Association; New Orleans Legal Assistance Corp.; Consumer Bankers Assoc., American Bankers Association, California Bankers Association, and Independent Bankers Association of America; National Consumer Law Center; and Legal Assistance Foundation of Chicago.

charges provision subject to clarification of the language to focus more clearly on the "pyramiding" problem.

On July 20, 1983, the Commission tentatively adopted the portions of staff's revised proposed rule banning confessions of judgment, waivers of statutory property exemptions, wage assignments, pyramiding late charges and blanket security interests in household goods. The Commission also tentatively adopted staff's revised proposal requiring that potential cosigners to be furnished with a "Notice to Cosigner" which explains their obligations and liability. The Commission rejected the provisions of the proposed rule pertaining to third party contacts and cross collateralization. The Commission determined that the effective date of the rule is to be one year from the date of promulgation.

B. Nature of Evidence on the Record

Publication of the proposed Credit Pratices Trade Regulation Rule was preceded by a two-year investigation which culminated in subpoena returns from 12 large national consumer finance companies.[9] The subpoenaed material consists of over 7,000 individual files on delinquent debtors[10] and official company operating manuals and training materials.

In response to the invitation to comment on the proposed rule [11] the Commission received over 1,300 written comments. The comments are divided as follows by source: Banks (475); bank trade associations (19); finance companies (169); finance company trade associations (46); retailers (103); retail trade associations (8); credit unions (96); credit union trade associations (9); savings and loan associations (11); savings and loan trade associations (6); legal aid attorneys (117); consumer groups (23); governmental entities (36); other organized groups (18); and miscellaneous, including individual consumers (207). An additional 358 post-record comments were received during the 1980–81 reopening for comments on the Presiding Officer and Staff Reports.

Three hundred and nineteen witnesses appeared in ten weeks of hearings held in Chicago, Dallas, San Francisco and Washington from September 1977 through January 1978. The interests they represented were: Finance companies and their trade associations (95); banks and bank associations (25); retailers and their associations (12); credit unions and their associations (8); legal services attorneys (67); governmental entities (49); consumers and consumer groups (14); and miscellaneous (15). In all, 508 hearing exhibits were placed on the record.

C. Consumer Credit Market

Approximately 70 percent of household indebtedness is in the form of home mortgages; about 23 percent is in the form of installment consumer credit.[12] About 5 percent of consumer debt is noninstallment consumer credit, that is, 30 day charge credit held by retailers, travel and entertainment companies and single-payment loans at commercial banks for consumer purposes.[13] At the end of December 1981 total consumer noninstallment credit amounted to $78.4 billion.[14]

At the end of 1981, consumer installment credit totaled $333.4 billion.[15] Of that amount, 44.8 percent was held by commercial banks, 26.9 percent by finance companies, 13.8 percent by credit unions, 8.9 percent by retailers, 3,5 percent by savings and loan associations, 1.3 percent by gasoline companies, and 0.8 percent by mutual savings banks.[16]

By type of credit, $126,4 billion, or 37.9 percent of installment credit outstanding at end of 1981, was for the purchase of automobiles.[17] Revolving credit outstanding amounted to $63.0 billion at the end of 1981 (18.9 percent of the total). Commercial banks held $33.1 billion, retailers $25.5 billion and gasoline companies $4.4 billion.[18]

All other consumer installment financing of $125.4 billion comprised 37.6 percent of the total outstanding at the end of 1981. Commercial banks held $46.7 billion, finance companies $40.0 billion, and credit unions $23.5 billion. Retailers (including the wholly owned finance subsidiaries of chain stores) held $4.0 billion, savings and loan associations $3.4 billion, and mutual savings banks $2.8 billion. This "other" category includes installment contract financing of household goods such as appliances and furniture, as well as all personal loans.[19]

II. Legal Basis for the Rule

This proceeding focuses on certain of the terms and conditions that appear in the written contracts that consumers sign when they obtain credit for reasons other than the acquisition of real estate.[1] Its purpose is the evaluation of certain collection remedies and related practices in light of the requirements of Section 5 of the FTC Act. This Chapter of the Statement discusses the Commission's mandate to proscribe unfair or deceptive acts or practices and will serve to place in perspective subsequent discussions of the specific provisions of the rule.

The Commission's authority to promulgate this Trade Regulation Rule is derived from two sections of the FTC Act: Section 18(a)(1)(B) and Section 5(a)(1).[2]

A. Rulemaking Authority

Section 18(a)(1)(B) of the Federal Trade Commission Act states, in pertinent part, that the Commission may prescribe:

[R]ules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce * * * [within the meaning of section 5(a)(1) of the FTC Act] * * * Rules under this subparagraph may include requirements

[9] These firms and debtor file record abbreviations are: Associates Financial Services (ASSOC), AVCO Financial Services (AVCO), Beneficial Finance Corporation (BEN), CIT Financial Services (CIT), credit Thrift of America (CTA), Dial Financial Corporation (DIAL), General Electric Credit Corp. (GECC), General Finance Corp. (GFC), General Motors Acceptance Corp. (GMAC), Household Finance Corporation (HFC), Liberty Loan Corporation (LIB) and Transamerica Financial Corporation (TA).

[10] Several tabulations of information from the files were prepared by FTC staff and placed on the record. Because the staff collected files to illustrate potential problems with creditors' remedies, however, for most statistical purposes other surveys on the record are superior. The primary value of the files lies in the narrative information they contain.

[11] *See supra* note 3.

[12] "Consumer credit" is defined by the Federal Reserve as "most short and intermediate-term credit extended to individuals through regular business channels, usually to finance the purchase of consumer goods and services or to refinance debts incurred for such purposes, and scheduled to be repaid (or with the option of repaying) in two or more installments." Board of Governors of the Federal Reserve System, Federal Reserve Statistical Release, G. 19 (Feb. 10, 1978).

[13] NCFA 1982 Finance Facts Yearbook at 41.

[14] *Id.*

[15] During the 1970's, the increases varied between $4.8 billion in 1970 and $43.1 billion in 1979. The increase in 1980 was only $1.5 billion.

[16] *Id.*

[17] Generally the automobile serves as security for installment contracts which are written by dealers and sold to banks or finance companies, or as security for auto loans made directly to consumers by banks and credit unions. Predominant in financing these purchases were commercial banks, with $59.2 billion outstanding of which $35.1 billion was purchased paper and $24.1 billion direct loans for the purchase of automobiles. Finance companies held $43.3 billion, most of which consisted of contracts purchased by the subsidiaries of manufacturers—that is, by General Motors Acceptance Corporation (GMAC), Ford Motor Credit and Chrysler Financial Corporation. Credit unions held $22.0 billion in loans made for the purchase of automobiles.

[18] *Id.*

[19] NCFA 1982 Finance Facts Yearbook at 42.

[1] *See* Statement of Reason for the Proposed Rule at 40 FR 16343 (April 11, 1975).

[2] 15 U.S.C. 57(a)(1)(B); 15 U.S.C. 45(a)(1) (Cum. Supp. 1983).

prescribed for the purpose of preventing such acts or practices.[3]

The Commission believes that the record should contain a preponderance of substantial reliable evidence in support of a proposed rule before that rule is promulgated. This belief is based partly on the Commission's perception of its function and partly on statutory and judicial authority. Any rule promulgated by the FTC may be challenged in court and may be set aside if "the court finds that the Commission's action is not supported by substantial evidence in the rulemaking record * * * taken as a whole," FTC Act section 18(e)(3)(A), 15 U.S.C. 57(e)(3)(A) (West Supp. 1983). Congress imposed this high standard as a " 'greater procedural safeguard []' " because of the 'potentially pervasive and deep effect' " of FTC rules. *American Optometric Ass'n* v *FTC*, 626 F.2d 896, 905 (D.C. Cir. 1980) (quoting H.R. Rept. No. 1107, 93d Cong., 2d Sess. 45–46, 1974 United States Code Cong. and Ad. News 7702, 7715.) Therefore, the Commission takes seriously its responsibility to determine if there is a preponderance of substantial reliable evidence to support a proposed rule, and to see that any supporting evidence is clearly recorded.

Initially, the Commission requires substantial evidence for the factual propositions underlying a determination that an existing act or practice is legally unfair or deceptive. When substantial evidence both supports and contradicts such a finding, the Commission bases its decisions on the preponderance of the evidence. Before promulgating a rule, however, rather than bringing individual cases, the Commission believes the public interest requires answers to the following additional questions: (1) Is the act or practice prevalent? (2) Does a significant harm exist? (3) Will the proposed rule reduce that harm? and (4) Will the benefits of the rule exceed its costs?[4] In analyzing each of these questions, three types of evidence are frequently brought to bear: Quantitative studies, expert testimony, and anecdotes. The Commission has the flexibility to marshall evidence for a rulemaking record that combines the best mix of these three. However, it has a responsibility to see that the best evidence reasonably available is included.[5]

The best evidence will often be surveys or other methodologically sound quantitative studies. Carefully prepared studies can often give a reliable answer to each of the four questions. First, reliable estimates of the incidence of a practice are an integral part of an assessment of prevalence and are frequently well-suited to quantitative methods. Second, the overall harm caused by a problem is best measured by determining both the magnitude of consumer injury when it occurs and the frequency of such an injury. This issue is also well-suited to quantitative analysis. Third, the effectiveness of a proposed remedy can often be shown only by quantitative studies since informally observed changes may be influenced by other, uncontrolled factors, or may be the result of chance (*i.e.*, not statistically significant). Finally, quantitative studies are most helpful when comparing costs with benefits.

In many instances, of course, precise quantitative answers to these questions are not possible, or could be obtained only at a prohibitive cost. In such cases, the Commission will seek alternative ways to conduct a systematic assessment of the benefits and costs of its regulatory proposals. As in considering the merits of a rule, the Commission will balance the benefits and costs of obtaining additional information. Although carefully structured quantitative studies are generally preferred as evidence in a rulemaking record, the Commission believes that it is possible in some instances to support a rule without such studies.

The second type of evidence is expert testimony. The primary use of expert testimony is in providing underlying technical details, such as medical or engineering facts or information concerning state law and procedures. Expert testimony is also useful to address the methodology of quantitative studies, and its possible effects on the results. Finally, experts can give their own opinions regarding the issue facing the Commission. These opinions are usually predictions of what quantitative studies would show. As such, they are less satisfactory than an actual study. When an expert's opinion conflicts with the conclusions of a study, the study itself is generally more reliable, unless deficiencies in the methodology or execution of the study have been established and a better study would, in all likelihood, support the expert's opinion.

A third type of evidence is anecdotes. Narratives of specific consumer injuries are helpful in certain ways. They call attention to a possible problem; they illustrate the contours of a known problem; and they may suggest areas for further inquiry. By themselves, anecdotes are generally good evidence that some harm exists. Without thorough exploration of the details of individual examples, however, anecdotes cannot establish the cause of a problem. Moreover, anecdotes give little evidence of the frequency of the harm, they provide limited evidence for the effectiveness of a proposed rule and virtually no evidence of the balance of benefits and costs. Therefore, anecdotal evidence is rarely sufficient to provide the "substantial evidence" which the Commission requires in the rulemaking record.

B. The Criteria for Unfairness Under Section Five [6]

Section 5(a)(1) of the FTC Act, in turn, states:

> Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.[7]

The Commission's authority to prohibit unfair acts or practices in the marketplace is well established.[8] The Commission and the courts have developed an extensive body of law concerning unfair practices.[9]

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[3] 15 U.S.C. 57(a)(1)(B) (Cum. Supp. 1983).

[4] Although the Commission believes that these questions should be asked and, to the extent possible, answered in every rulemaking, on the basis of the best evidence reasonably available, it recognizes there is room for variation in the specific answers that would justify the issuance of a rule, depending upon the circumstances of each particular rulemaking. Different industries lend themselves in varying degrees to answering these questions. the characteristics of the industry, the ability to reasonably gather information, the burdensomeness of the regulation, and the agency's ability to address the unfair or deceptive practice by alternative means must be considered.

[5] The concept of "reasonably available" takes into account the practical resource constraints on the ability of the Commission or parties to a rulemaking to marshal evidence bearing on a particular problem.

[6] Although a majority of the adopted rule provisions are based on the Commission's authority to regulate unfair acts or practices, § 444.3(a)(1), which concerns misrepresentations of the nature or extent of cosigner liability, is premised on the FTC's jurisdiction over deceptive acts or practices. A discussion of the Commission's authority to identify and correct consumer deception is set forth in Chapter IX, *infra*.

[7] 15 U.S.C. 45 (Cum. Supp. 1983).

[8] When Congress created the Commission's unfairness authority, it deliberately framed that authority in general terms. Congress felt that any attempt to list all "unfair * * * acts or practices" could leave loopholes for evasion of the law. Also, Congress did not intend the meaning of "unfair" to be static. It was expected that the underlying criteria would evolve and develop over time. For a comprehensive discussion of the generality of Section 5, see Statement of Basis and Purpose, Advertising of Ophthalmic Goods and Services, 43 FR 23992, 24000 (1978).

[9] *See generally, FTC v. R.F. Keppel Bros.*, 291 U.S. 304, 313 (1934); Statement of Basis and Purpose, Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking, 29 FR

Continued

The Wheeler-Lea amendment of 1938, the 1975 and 1980 FTC Improvements Acts, and pending legislation in the Congress constitute legislative recognition that, in an imperfect system, certain commercial practices may impose undue costs and risks on individuals, depriving them of the benefits normally associated with free and vigorous competition.[10] In this proceeding, the Commission is exercising its unfairness jurisdiction to determine whether in the consumer credit market there is a market imperfection that is preventing a balancing of costs and benefits to individuals. This proceeding examines the market to determine whether it ensures an efficient allocation of cost and risk between consumers and those who extend credit to them. It is our conclusion that the practices addressed by this rule, as discussed individually in Chapters IV–IX, are within the parameters of unfairness under Section 5.

In December 1980, the Commission prepared a formal statement analyzing the legal basis for the exercise of its Section 5 consumer unfairness jurisdiction.[11] That document reviewed the Commission's prior exercise of its unfairness jurisdication and clarified the criteria for its future use of this authority.

Consumer injury is the central focus of any inquiry regarding unfairness. Not every instance of consumer injury is unfair, however, because virtually any commercial practice involves a complex mix of benefits and costs. In its statement, the Commission observed that:

> To justify a finding of unfairness the injury must satisfy three tests. It must be substantial; it must not be outweighed by any countervailing benefits to consumers or competition that the practice produces; and it must be an injury that consumers themselves could not reasonably have avoided.[12]

Pending legislative proposals would give Congressional recognition to this unfairness standard:

> An act or practice in or affecting commerce shall be considered to be an unfair actor or practice * * * if—
>
> (i) Such act or practice causes or is likely to cause substantial injury to consumers; and
>
> (ii) Such substantial injury (I) is not reasonably avoidable by consumers; and (II) Is not outweighted by countervailing benefits to consumers or to competition which result from such practice.
>
> Any determination under the preceding sentence regarding whether an act or practice is an unfair act or practice shall take into account, in addition to other relevant factors, whether such act or practice violates any public policy as established by Federal or State statutes, common law, practices in business or industry, or otherwise.[13]

The Commission's unfairness authority does not extend to trivial or speculative harm. "An injury may be sufficiently substantial, however, if it does a small harm to a large number of people, or if it raises a significant risk of concrete harm."[14] Furthermore, except in aggravated cases where tangible injury can be clearly demonstrated, subjective types of harm—embarrassment, emotional distress, etc.—will not be enough to warrant a finding of unfairness. Rather, economic or other tangible harm must also be present.[15]

Earlier articulations of the consumer unfairness doctrine have also focused on whether "public policy" condemned the practice in question.[16] In its December 1980 statement, the Commission stated that it relies on public policy to help it assess whether a particular form of conduct does in fact tend to harm consumers.

We have thus considered established public policy "as a means of providing additional evidence on the degree of consumer injury caused by specific practices."[17] By "established" public policy, we mean that: (i) The policy is embodied in "formal sources" such as constitutions, statutes, or judical decisions, and (ii) it is widely shared by a number of states.[18] This is especially true concerning court decisions involving constitutional rights, such as due process guarantees. Where public policy appears to be in conflict, the Commission will "reconsider its assessment of whether the practice is actually injurious in its net effects."[19] The Commission has applied this standard to the creditor practices prescribed by this rule.

In short, consumer injury is the central element in a finding of unfairness. But not every instance of consumer injury will lead to a determination of unfairness. The injury must be found to be substantial, not reasonably avoidable by the consumer, and not outweighed by countervailing benefits to consumers or competition. The record as it relates these criteria to each rule provision will be reviewed in the respective chapters of this statement addressing each rule provision. Chapter III of this Statement contains an examination of the record as it relates to the general question of reasonable avoidance by consumers of creditor remedies. The balance of this Chapter presents an overview of the remaining unfairness criteria as they relate to the rule.

C. Unfairness in Creditors' Contractual Remedies

1. Substantial Injury

The rulemaking record documents substantial consumer economic or monetary injuries from the use of these creditor remedies. For example, confessions of judgment cause injury by depriving consumers of notice of a suit or hearing and the opportunity to appear and present any meritorious claims or defenses. Once obtained, the confessed judgment can be turned into a lien on the consumer's real and personal property.[20] If the contract also contains

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8324, 8355 (1964); *All States Industries Inc. v. F.T.C.*, 423 F.2d. 423 (4th Cir.), *cert. denied*, 400 U.S. 828 (1970); *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244–45 n. 5 (1972); Statement of Basis and Purpose, Preservation of Consumers' Claims and Defenses, 40 FR 53506, 53522 (1975); *Spiegel, Inc.*, 83 F.T.C. 425 (1975), *aff'd in part*, 540 F.2d 287 (7th Cir. 1976).

[10] *See, e.g., Horizon Corporation*, 97 F.T.C. 464 (1981).

[11] *See* Letter from the Commission to the Honorable Wendell H. Ford and the Honorable John C. Danforth (Dec. 17, 1980) (hereinafter cited as "Commission Unfairness Statement"). *See also Horizon Corporation*, 97 F.T.C. 464 (1981); Letter from the Commission to the Honorable Bob Packwood and the Honorable Bob Kasten (March 5, 1982) (hereinafter cited as "Commission Letter").

[12] *See* Commission Unfairness Statement, *id.* The 1980 Commission Unfairness Statement is entirely consistent with the legal theory which we enunciated in the 1975 initial notice of rulemaking for this proposal. We indicated that relief under Section 5 would be appropriate if:

(1) The creditor imposes upon consumers contracts of adhesion (i.e., the credit customers cannot bargain over the particular contract provisions) which contain provisions disadvantageous to consumers or the creditor fails to include in the contracts of adhesion provisions beneficial to consumers, all to the consumers' detriment; and

(2) This detriment to consumers is not offset by a reasonable measure of value received in return.

440 FR 16349 (1975)

These are, of course, the same elements—reasonable avoidance and countervailing benefits—as those identified (albeit in different language) in the 1980 statement.

[13] H.R. 2370, 98th Cong., 1st Sess. This proposed legislation is supported by the Commission and a majority of the commissioners have endorsed its incorporation into the FTC Act.

[14] Commission Unfairness Statement, *supra* note 11.

[15] *Id.*

[16] *See, e.g.*, Statement of Basis and Purpose, Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking, 29 FR 8324, 8355 (1964); *FTC v. Sperry & Hutchinson*, 405 U.S. 233, 244–45 n.5. (1972).

[17] Commission Unfairness Statement, *supra* note 11, at 9. *See also* Commission Letter, *supra* note 11, at 3 "A thorough analysis of such [established public] policies 'can serve as an important check on the overall reasonableness of the Commission's action.' "

[18] Commission Unfairness Statement, *supra* note 11, at 12.

[19] *Id.* at 10.

[20] *See infra* Chapter IV.

a waiver of exemption clause, the consumer can lose the basic necessities of life. This would require that the debtor replace these items or face destitution, and the possibility of becoming a public charge.[21] Blanket security interests in household goods also present this possibility.[22]

A wage assignment also occurs without the due process safeguards of a hearing and an opportunity to assert defenses or counterclaims. For consumers who may have valid reasons for nonpayment, the injury inherent in the denial of due process protections can be severe. It can lead to job loss, or severely reduced income, either one of which could prevent the consumer from providing for his or her family or cause default on other obligations.[23]

Pyramiding of late charges results in the consumer being unknowingly assessed multiple late charges for a single late payment, even though subsequent payments are timely made. The multiple late charges can add up to 60 percent annual percentage rate in many cases.[24]

The rulemaking record establishes by a preponderance of the evidence that consumers suffer substantial economic or monetary injury from creditors' use of these practices. This is the primary focus of our unfairness analysis. Although our unfairness standard makes it a subsidiary consideration, the record shows that consumers often suffer substantial emotional or subjective harm as well. For example, wage assignments invade the consumer's right of privacy, causing embarrassment and humiliation, without a judicial determination of the validity of the creditor's claim. Although such subjective harm is not easily quantifiable, it is clear that consumers value measures to protect them from such injury.

In assessing particular remedies, our focus has been on the consequences of this remedies for consumers in those cases when the remedy is invoked or threatened. Nonetheless, all consumers will benefit from the rule to the extent that it reduces the adverse consequences of default because it serves, in that capacity, as a form of insurance. At the time a consumer enters into a loan agreement, the likelihood of default is both remote and difficult to assess. Thus, all consumers face some risk of default and will value insurance which reduces the most injurious consequences of default, even if they never need the insurance.[25] In this sense, all consumer debtors will benefit.

2. Not Reasonably Avoidable

A violation of the Section 5 unfairness standard will almost always reflect a market failure or market imperfection that prevents the forces of supply and demand from maximizing benefits and minimizing costs. Normally, we can rely on consumer choice to govern the market. In considering whether an act or practice is unfair, we look to whether free market decisions are unjustifiably hindered.

In consumer credit transactions, the rights and duties of the parties are defined by standard-form contracts, over most of which there is no bargaining. The economic exigencies of extending credit to large numbers of consumers each day make standardization a necessity. The issue, however, is whether the contents of these standard form contracts are a product of market forces.

Although market forces undoubtedly influence the remedies included in standard form contracts, several factors indicate that competition will not necessarily produce optimal contracts. Consumers have limited incentives to search out better remedial provisions in credit contracts. The substantive similarities of contracts from different creditors mean that search is less likely to reveal a different alternative. Because remedies are relevant only in the event of default, and default is relatively infrequent, consumers reasonably concentrate their search on such factors as interest rates and payment terms. Searching for credit contracts is also difficult, because contracts are written in obscure technical language, do not use standardized terminology, and may not be provided before the transaction is consummated. Individual creditors have little incentive to provide better terms and explain their benefits to consumers, because a costly education effort would be required with all creditors sharing the benefits. Moreover, such a campaign might differentially attract relatively high risk borrowers.[26]

For these reasons, the Commission concludes that consumers cannot reasonably avoid the remedial provisions themselves. Nor can consumers, having signed a contract, avoid the harsh consequences of remedies by avoiding default. When default occurs, it is most often a response to events such as unemployment or illness that are not within the borrower's control.[27] Thus, consumers cannot reasonably avoid the substantial injury these creditor remedies may inflict.

3. Countervailing Benefits

These creditor practices involve a mixture of costs and benefits, both economic and social. An individual creditor practice will not be considered to be unfair unless it is injurious in its net effects.[28] The potential costs include burdens such as "increased paperwork, increased regulatory burdens on the flow of information, reduced incentives to innovation and capital formation, and similar matters."[29]

The potential costs of most significance in this proceeding include increased collection costs, increased screening costs, larger legal costs, and increases in bad debt losses or reserves. Increased creditor costs generally would be reflected in higher interest rates to borrowers, reduced credit availability, or other restrictions such as increased collateral or larger down payment requirements.[30]

The possible magnitude of these costs is diminished by the fact that the rule leaves untouched a wide variety of more valuable creditor remedies. Remedies such as repossession, suit, garnishment, acceleration and direct contacts, which are highly valued by creditors,[31] are not affected by this rule. Thus, for example, the impact of restrictions on wage assignments is limited, given the availability of garnishment to allow creditors to reach a debtor's income. The remedies subject to the rule must be evaluated in light of their more limited incremental contribution to deterring

[21] *See infra* Chapter VII.

[22] *See infra* Chapter VI.

[23] *See infra* Chapter V.

[24] *See infra* Chapter VIII.

[25] The insurance thus provided is not costless, of course, and some consumers may prefer not to purchase it. The costs are discussed in this Chapter, *see infra* Section 3: Countervailing Benefits, and, to the extent that they can be identified for each of the individual rule provisions, in the "offsetting benefits" section of Chapters IX–X.

[26] *See infra* Chapter III, Section A.

[27] *See infra* Chapter III, Section B

[28] *See Pfizer, Inc.*, 81 F.T.C. 23, 62–63 n.13 (1972); Statement of Basis and Purpose, Disclosure Requirements and Prohibitions Concerning Franchishing the Business Opportunity Ventures, 43 FR 59614, 59636 n.95 (1978). When making this determination, the Commission may refer to existing public policies for help in ascertaining the existence of consumer injury and the relative weights that should be assigned to various costs and benefits. The role of public policy in unfairness determinations will be discussed more generally below.

[29] Commission Unfairness Statement, *supra* note 11, at 7.

[30] *E.g.*, Walter E. Huizenga, National Automobile Dealers Association, R–II (g)–419; Helmut Schmidt, Transamerica Finance Association, Tr. 6187–89.

[31] *E.g.*, *Consumer Credit in the United States*, Report of the National Commission on Consumer Finance (NCCF) at 44 (1972); NCCF Technical Studies, Vol. V, at 118–127, 151–153 (1973).

default or reducing other creditor costs, given remedies that remain available.

The action we take today based on this record is premised on our finding that the cost of each rule proposal is lower than the costs, to consumers and competition, of the specific practices at which the rule is aimed. For the provisions we adopt, record evidence establishes that the action we take will provide benefits to consumer in excess of any costs. In other cases, the record does not justify the action originally proposed.[32]

To the extent that the remedies that the rule prohibits reduce the cost of business for creditors, borrowers as a group benefit from those remedies through greater availability of credit and lower interest rates. However, the Commission believes the overall costs to consumers are greater than these benefits.[33]

D. Legal Format of the Rule

We have adopted certain text changes to bring this rule into accord with the decision in *Katharine Gibbs School v. FTC*[34] (hereinafter *Gibbs*), which requires a rational connection between the practice found to be violative of Section 5 and the prescribed remedy. In order to make this connection clear, the Second Circuit held that the Magnuson-Moss Act requires the Commission to set forth in the actual text of a rule a description of the underlying unfair or deceptive acts or practices which serve as its basis.

Most of the provisions of this rule require the elimination or restriction of specified contractual terms and conditions,[35] or of identified accounting procedures.[36] The rule defines the use of such clauses or procedures, *in se*, to be an unfair practice. Because in these instances the direct relationship between the unfair practice and the proscription of that practice is apparent on the face of each such provision, there is no reason to set out the two separately.

The only provision to which this analysis does not apply is the requirement of a cosigner disclosure notice in § 444.3. In order to comply with the *Gibbs* ruling, we have modified this section to, first, define the unfair or deceptive practices (misrepresentation of and failure to disclose the nature or extent of cosigner liability) and, second, prescribe the remedy (furnishing the required notice). We believe this language meets both the statutory requirement that the unfair practice be described with specificity and the *Gibbs* imperative that the identified prescription be rationally related to the defined unfair practice.

E. Regulatory Analysis

Based on unfairness, the legal theory for this rule requires the Commission to examine the benefits and costs of each rule provision to conclude that the practice at issue violates Section 5. This analysis is no different than that embodied in the statutory requirement to conduct a regulatory analysis.[37] For this reason, the Commission has integrated the regulatory analysis with the Statement of Basis and Purpose for the rule. A regulatory analysis for the sections of the original proposal that the Commission decided not to promulgate is included in Chapter XIII.

III. Evidentiary Basis for the Rule as a Whole

As discussed in the preceding chapter, there are three elements in the Commission's consideration of whether the consumer injury associated with a practice reaches the level of legal unfairness. To justify a finding of unfairness, the injury must be substantial, not outweighed by countervailing benefits to consumers or competition, and not reasonably avoidable by consumers.

This chapter discusses our rationale and the evidence relating to the third element—the degree to which injury is reasonably avoidable by consumers. The ability to avoid injury depends in part on whether consumers have access to loan contracts without the provisions in question, and in part on whether, having signed a contract containing these provisions, consumers can avoid their implementation. Our analysis deals with the rule as a whole. Discussion of record evidence pertaining to specific provisions is reserved for subsequent chapters.

A. The Market for Creditors' Remedies

In part, consumers' ability to avoid certain remedies depends on their ability to shop and compare the language of different credit contracts. To the degree consumers cannot reasonably obtain contracts without certain provisions, they must accept those provisions if they want a loan.

The record shows that although consumers may be able to bargain over terms such as the price of credit and the number or size of payments,[1] there is no bargaining over the boilerplate contract terms that define creditor remedies.[2] We concur with the Presiding Officer's finding that creditors:

> Universally make use of standardized forms in extending credit to consumer. These forms are prepared for creditors or obtained by them, and the completed contract is presented to the prospective borrower on a "take it or leave it basis".[3]

The consumer credit industry, government officials, legal aid attorneys, and academics concurred with this finding.[4]

[32] We have deleted, therefore, the provisions concerning deficiency balances, attorneys' fees, cosigners (other than the disclosure notice to cosigners), third party contacts, and cross collateralization.

[33] *See infra* Chapter X.

[34] 612 F.2d 658 (2d Cir. 1979).

[35] Section 444.2(a) (1) through (4).

[36] Section 444.4.

[37] Section 22 of the Federal Trade Commission Act, as amended, 15 U.S.C. 57b-3. The statutory authority specifically provides for integrating the regulatory analysis with the Statement of Basis and Purpose. *See FTC Act section 22(b)(3)(A)(ii).*

[1] *E.g.*, Gerald Kell, Board of Governors, Federal Reserve System, HX-450 (summarizing bank comments); Paul Stansbury, Valley National Bank, R-I(a)-334.

[2] *E.g.*, Clare Rollwagen, Minnesota Consumer Finance Conference, Tr. 3923; Richard Halliburton, Legal Aid & Defender Society of Kansas City, Tr. 114; Jane Johnson, New Orleans Legal Assistance, R-I(c)-101; Eugene Thirolf, Land of Lincoln Legal Assistance R-I(c)-20; Paul Smith, Pennsylvania CFA, Tr. 6493; Eric Wright, Santa Clara Law School, Tr. 6059; Sam Kelly, Texas Consumer Credit Commissioner, Tr. 1233, Michigan Bankers Association, R-I(a)-161; Robert Cobrann, Delta Bank and Trust Co., R-II(c)-5; Leslie Butler, Consumer Bankers Association, Tr. 11588; Robert Mallock, Beneficial Finance Company, Tr. 9578; "Remedial and security provisions seem to be standard from one lender to another, and the market very possibly would not reflect bargaining for these provisions since lenders do not compete for delinquent accounts." Royal White, Mississippi Consumer Finance Association, Tr. 207.

[3] Presiding Officer's Report at 61.

[4] *E.g.*, *Bankers:* Alfred Lapan, Massachusetts Cooperative Bank League, Tr. 11481; Paul Pfleiderer, Cont. Illinois Bank & Trust, Tr. 2337; Russel Friedman, Security Pacific Co., R-I(a)-429; Joe Martin, 1st United Bancorporation, Tr. 1132; Hogan McMahan, Independent Bankers of Texas, Tr. 1916; Donald Boudreau, Chase Manhattan Bank, R-I(a)-522; Kenneth Larkin, Bank of America, Tr. 5573; Robert Bark, Republic National Bank of Dallas, R-I(A)-872. *Finance Companies:* Hyman Wehner, Atlantic Finance Co., California Loan and Finance Association, Tr. 6494, James Ambrose, International Consumer Credit Association, R-I(a)-432; Robert E. Dean, Security Mutual Finance, Alabama Consumer Finance Association, Tr. 155; William Lehye, Consumer Loan Co., Tr. 4385; H. E. Smith, Alabama Lenders Association, R-I(a)-333; Fred Harvey, Georgia Industrial Loan Association, Tr. 4476; Stephen Hellerstein, Colorado Industrial Bankers Association, Colorado Consumer Finance Association, Tr. 7113; Joseph Park, Community Finance Co., Tr. 3210; Frank J. Fore, Ford Motor Credit Co., R-I(a)-616. *Retailers:* Gordon Wear, Texas Independent Automobile Dealers, Tr. 707; Robert Lewis, Firestone Tire & Rubber Co., R-I(a)-669; F. T. Weimer, Sears, Roebuck and Co., R-I(A)-427. *Credit Unions:* James Barr, National Association of Federal Credit Unions, R-I(a)-484; Harold Welsh, Illinois Credit Union League, Tr. 4091; Jackson Guyton, Mutual Savings Credit Union, R-I(a)-342. *Legal Aid Attorneys:* James Hiatt, Legal Aid of Oklahoma, R-I(c)-14; John Paer, Legal Aid of Hawaii, Tr. 5339; Jonathan Epstein, Essex/Newark

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In and of itself, standardization is not an indictment of the consumer loan market. The use of standardized forms is an efficient, low cost method of conducting a loan transaction.[5] The costs of negotiating with each customer would surely outweigh the benefits that would result from individually tailored contracts. As the Presiding Officer found, "it is simply not feasible to conduct the transaction any other way."[6] In addition, testimony indicates that the complex regulatory environment in which most lenders do business makes precise contract wording important, and thereby necessitates the use of standardized contracts.[7]

In a well-functioning market, competition among sellers would tend to produce the mix of standardized contract terms that would best satisfy borrower preferences.[8] Despite the use of standardized contracts, individual creditors have incentives to compete with each other by offering different standard form contracts, provided that a sufficient number of consumers know about the differences and prefer one contract to another.[9] In such circumstances, consumers could reasonably avoid undesirable contracts, and there would be no basis for Commission intervention. It is therefore necessary to examine the factors that limit consumer search for more desirable credit contracts.

Record evidence indicates that differences exists in the kinds of contracts offered by different creditors. Finance companies in particular are more likely to use the remedies subject to this rule than are other creditors.[10] Among finance companies, use of some contract terms is relatively low when examined nationally. In particular states, however, where certain remedies are more widely used, the incidence is considerably greater.[11] Moreover, within a local area, contracts offered by creditors of a given class may be substantially identical.[12]

The strong similarity of consumer credit contracts among creditors of a given kind within a local area limits consumers' incentives to search elsewhere for a better contract.[13] If 80 percent of creditors include a certain clause in their contracts, for example, even the consumer who examines contract from three different sellers has a less than even chance of finding a contract without the clause.[14] In such circumstances relatively few consumers are likely to find the effort worthwhile, particularly given the difficulties of searching for contract terms discussed below.

A second factor also limits the incentives of consumers to search for better credit contracts. Default is a relatively infrequent occurrence, and most often occurs for reasons that are beyond the control of the borrower.[15] Unlike terms such as interest rates or payments, which are relevant in every transaction, the chances are good that the remedial provisions in any particular transaction will never be relevant. Thus, consumers would quite reasonably concentrate their search for credit on terms such as interest rates and payments, rather than alternative remedial provisions.

Consumers' limited incentives to seek out better contracts are compounded by the costs and difficulties of searching for contract language. Borrowers usually cannot understand the technical language used in credit contracts.[16]

Legal Services, Tr. 8943; Eric Wright, Professor of Law, University of Santa Clara, Tr. 8059; Alex Soldamando, District Attorney, San Francisco, R-I(d)-220; Jane Johnson, New Orleans Legal Assistance, Tr. 405; John Seveck, California Legal Assistance, Tr. 6994; Pamela Pierring, C.A.M.P., Consumer Action Project, Tr. 6375; Charles Pyle, Southern Legal Aid, Inc., Tr. 479; Richard Halliburton, Legal Aid and Defender Society of Kansas City, Tr. 114; David Driscoll, El Paso Legal Assistance, Tr. 1614. *Others:* Gerald Kell, Board of Governors, Federal Reserve System, HX-450; Michael Hayes, Center of Law and Social Policy, R-I(c)-32; Vern Countryman, Professor of Law, Harvard University School of Law, Tr. 9143; Raphael L. Podolsky, Connecticut Legal Assistance, Tr. 10616; Thomas Raleigh, (self) Illinois Consumer Protection, Tr. 2454; William S. Ballenger, Michigan Department of Licensing and Regulation, Tr. 8176.

[5] *E.g.*, David Pohl, Capital Financial Services, R-I(a)-541; Sam Kelly, Consumer Credit Administrator, State of Texas, Tr. 1294; Harold Welsh, Illinois Credit Union League, Tr. 4091; Jackson Guyton, Mutual Savings Credit Union, R-I(a)-342, Charles Towers, Florida Consumer Finance Association, Tr. 3802; William Lehye, Consumer Loan Co., Tr. 4365; H. E. Smith, Alabama Lenders Association, R-I(a)-383; Kenneth Lakin, Bank of America, Tr. 5673.

[6] Presiding Officer's Report at 61.

[7] In some cases, lawyers and courts have struggled for years refining the language of these contracts. See Robert E. Dean, Alabama Consumer Finance Assoc., Tr. 157; Mark A. Denny, Nebraska Consumer Credit Assoc., Tr. 3747; Charles W. Lowers, Florida Consumer Finance Assoc., Tr. 3802.

In some states a form cannot be altered without approval from the regulatory authority. Among the states that require prior review and approval are Wisconsin, Richard A. Victor, Assistant Attorney General, R-I(d)-42 at 3; Alabama, Robert E. Dean, Alabama Consumer Finance Assoc., Tr. 155-56; Nevada, Frank J. Fahrenkopf, Jr., Nevada Consumer Finance Association, Tr. 7857; Florida, Charles W. Lowers, Florida Consumer Finance Assoc., Tr. 3802; Rhode Island, John J. Dunnigan, Lincoln Finance, Tr. 10215-16; and California, William Probasco, Mid-Valley Time Loan, Tr. 6118. In Idaho, creditor forms are reviewed annually. Tom D. McEldowney, Director, Idaho Department of Finance, Tr. 5077.

[8] *E.g.*, John Umbeck, Purdue University, Tr. 9557; *cf.*, William Ballenger, Director, Michigan Department of Licensing and Regulation, Tr. 8176.

[9] This general proposition is widely recognized in the economic literature. *See, e.g.*, Schwartz and Wilde, *Intervening in Markets of the Basis of Imperfect Information: A Legal and Economic Analysis*, 127 U.Pa.L.Rev. 630 (1979); Beales, Craswell, and Salop, *The Efficient Regulation of Consumer Information*, 24 Journal of Law and Economics 491 (1981). Its applicability to consumer credit markets was recognized by the National Commission on Consumer Finance (NCCF) in the context of Truth in Lending disclosures. *See Consumer Credit in the United States*, Report of the NCCF at 176-7 (1972).

[10] *See generally*, National Consumer Law Center Survey of Credit Contract Practices (1977), HX-467; NCCF Technical Studies, Vol. V (1972). The incidence of particular clauses is discussed in relevant chapters of this statement.

[11] *E.g.*, use of wage assignments is most prevalent in Illinois and New York, *see infra* Chapter V; *use of cognovits is substantially limited to one state—Pennsylvania*, see infra *Chapter IV*.

[12] *E.g.*, Steven P. McCabe, Consumer League of New Jersey, Tr. 8729, R-I(d)-87; Paul J. Pfeilsticker, Continental Illinois National Bank & Trust Co., Tr. 2338; Agnes C. Ryan, Legal Aid Bureau, United Charities of Chicago, Tr. 2244; Drew Johnson, Lane County Legal Aid, Tr. 6305-06; George H. Jones, Association Management Services, R-I(a)-29 at 4; Jerrold Oppenheim, Legal Assistance Foundation of Chicago, Tr. 2155; Michael Burns, Legal Aid Society of Minneapolis, R-I(c)-99; Carol Knutson, Neighborhood Legal Services Association, Pittsburgh, Tr. 11103; Robert Erickson, DNA Legal Services, Tr. 1668; R. A. Stanton, Mid Cities Schools Credit Union, R-I(a)-525; Raphael L. Podolsky, Connecticut Legal Services, R-I(c)-56; Richard Warren, Alabama Lenders Association, R-I(a)-361; Robert Bark, Republic National Bank of Dallas, R-I(a)-872; Stephen Cochran, Bexar County Legal Aid, Tr. 1716; Andrew Eiler, Consumer Affairs Department, United Auto Workers, R-I(d)-92; Hagen McMahen, Independent Bankers Association of Texas, Tr. 1916; Robert Duke, Texas Consumer Finance Association, Tr. 1835; Joe Martin, 1st United Bancorporation, Tr. 1136; Russell Freeman, Security Pacific Bank, R-I(a)-429; *but see* Donald Boudreau, Chase Mahattan Bank, R-I(a)-522.

[13] George Stigler, in a pioneering article on the subject of search, shows that "if the dispersion of price quotations [among] sellers is at all large (relative to the cost of search), it will pay, on average, to canvass several sellers." In contrast, when price dispersion is small and the cost of information acquisition is high, it will not pay to search for additional quotations. The Economics of Information," 69 Journal of Political Economy, 171 at 173 (1961). This argument applies, in general, to any information, not just price quotations. If additional search is unlikely to discover a better alternative, it will not pay to engage in additional search.

[14] If 80 percent of creditors chosen at random use a particular term, then the chance that 3 creditors chosen at random all use the term is .8×.8×.8, or 951 percent.

[15] *See infra* Section B.

[16] *E.g.*, Professor John Spanogle, Tr. 9714; Dr. Paul E. Smith, Wharton School, on behalf of the National Consumer Finance Association, Tr. 8469; William S. Ballenger, Director, Michigan Department of Licensing and Regulation, Tr. 8177; Kayla Vaughn, Michigan PIRG, Tr. 4648; Karl Friedman, Alabama Consumer Finance Association, Tr. 1466; Professor Eric Wright, University of Santa Clara School of Law, Tr. 8082.

Although debtors may not be able to understand the specific terms of particular contracts, most debtors probably have a reasonably accurate general perception of what is likely to happen to them if they default on their obligations. *See* Jerrold Oppenheim, Legal Assistance Foundation of Chicago, Tr. 2154-55; Michael Burns, Legal Aid

Continued

Some witnesses stated that many provisions are phrased in terms that are virtually impossible for the non-lawyer to understand.[17] As the Presiding Officer noted:

> Consumer credit contracts are not drafted with a view of making the provisions understandable to the consumer generally and do not contain an adequate explanation of either the consumer's rights or the creditor's obligations.[18]

Nor can consumers seek explanations from lenders, because inquiries by prospective customers regarding remedies may tend to make a creditor wary and hesitant to grant the loan.[19] The Presiding Officer concluded "that consumers do not have a complete understanding of consumer credit contracts." [20] We concur.

Comparing contracts is also complicated by the lack of standardized terminology among various creditors. Different creditors may use different language to achieve essentially the same results.[21] For example, some contracts might refer to a cognovit, which other contracts might describe as a confession of judgment. Particularly given the complex legal terminology often employed, many consumers may find it difficult even to identify substantive differences in contracts. In some cases, comparison is impossible because the creditor refuses to give out the loan contract until the borrower seems ready to sign it.[22]

In many other markets when comparing products is difficult for shoppers, companies attempt to make such information more easily accessible. Companies with more favorable remedial terms have an incentive to advertise that fact, and thereby attract a larger share of the loan market.[23] No such advertising is reflected in the record, however. Nor does the rulemaking record have specific information on why such advertising fails to occur. Nevertheless, the Commission sees several possible explanations, including those discussed above: the complexity of the legal process surrounding remedies and the fact that the average consumer does not focus on elements of a transaction that are distant in time and probability.

Consumer ignorance with regard to the meaning of contractual language is one factor that may inhibit such advertising. For example, the company that claims that its contract contains no waiver of exemption will have to explain what a waiver is, and why consumers should prefer a contract without it. Such an educational campaign is costly and will tend to benefit other creditors who "free ride" on the company's efforts.[24] If consumers prefer contracts without waivers, then other companies can eliminate their waivers (and advertise the fact) without bearing the costs of education.

Adverse selection by borrowers also limits the incentives of creditors to promote remedies that are relatively lenient. Within any group of borrowers that appear identical to the creditor, the true default risk for some is greater than others. If a creditor were to introduce a loan contract with less onerous remedies than those of its competitors, then its contract would become especially attractive to relatively high risk borrowers, because these borrowers have the most to gain from the more lenient remedy terms. Therefore, a disproportionately greater share of the borrowers attracted to this company would be those with a relatively high risk of default.[25] Thus, a company that promoted more lenient remedy terms might experience a higher rate of borrower default than its competition. Unless its higher rate of interest could fully compensate for this higher rate of default, the company would find these remedy provisions unprofitable, even if consumers would prefer the provisions.

Ultimately, similar considerations led the Commission to reject an alternative rule that would have required plain English disclosure of contractual remedies. Such a rule would make information more easily accessible to borrowers. However, in so doing it would tend to exacerbate the adverse selection problem. Moreover, disclosure alternatives would deal only partially with limited seller incentives to promote alternative remedies due to the free rider problem, and would not address at all consumers' limited incentives to search for information about remedies.[26]

Although some options exist, and some consumers may search for contract provisions they prefer, the record indicates that in consumer credit markets, comparison of competing contracts is difficult and costly. Moreover, remedies intended to reduce the costs of identifying better contracts are unlikely to succeed. Therefore, the Commission has concluded that consumers cannot reasonably avoid the contract clauses at issue in this proceeding.

B. Default and its Causes

Even if a contract contains undesirable remedies, borrowers could reasonably avoid injury if they could avoid implementation of remedies. Addressing this possibility requires an examination of the causes of default.

There are two leading studies of the causes of default, one by the National Commission on Consumer Finance [27] and the other by sociologist David Caplovitz.[28] The studies complement each other—the NCCF relied on survey data from creditors but Caplovitz surveyed debtors. Both reach similar conclusions.

"Loss of income" stands out as the leading reason for default in the Caplovitz study. [29] The primary causes of loss of income are "adverse employment change" (including unemployment, loss of overtime, etc.) and "illness to chief wage earner."[30] Findings of the NCCF are similar. Unemployment is ranked as the most important cause of default by all classes of creditors. Overextension is found to be the second most important cause by banks and finance companies, and the third most important cause by retailers.[31]

These categorizations are necessarily somewhat imprecise. [32] Nevertheless, the results indicate that the precipitating cause of default is usually a circumstance or event beyond the debtor's immediate control. When such events occur, default is generally an involuntary response.

Society of Minneapolis, HX-95 at 5-6. Clarence Naborowski, Illinois Consumer Finance Association, said the great majority of consumers recognize an obligation to pay their debts, Tr. 3845, but they do not read every line of their contracts and, for example, do not know what statutory exemptions are available. Tr. 3878-79.

[17] *E.g.*, Alfred Blakes, North Louisiana Legal Assistance Corporation, HX-50 at 3-4. *See also*, W. Lloyd Copeland, Legal Aid Society, Tr. 2004; David M. Driscoll, El Paso Legal Assistance Society, Tr. 1614-15.

[18] Presiding Officer's Report at 77.

[19] *E.g.*, F. T. Weimer, Sears, Roebuck & Co., R-I(a)-427; Leslie Butler, Consumer Bankers Association, Tr. 11526; James K. Owens, Bank of Gordo, R-I(a)-208 at 3; Keneth V. Larkin, Bank of America, Tr. 5674; Paul J. Pfeilsticker, Continental Illinois Nat'l Bank & Trust Co., Tr. 2337.

[20] Presiding Officer's Report at 77.

[21] *E.g.*, R-XI-164, 165, 187, 191-193, 195; *see generally*, consumer credit contracts, R-XI-[name of company], in binders 215-42-1-12-36 through 294.

[22] *See* Jonathan Epstein, Essex-Newark Legal Service, Tr. 8945; Toby J. Rothschild, Legal Aid Foundation of Long Beach, HX-264 at 1.

[23] In general, "sellers have a substantial economic incentive to disseminate information to consumers." *See, e.g.*, Beales, Craswell, and Salop, *supra* note 8, at 491, 502.

[24] The free rider problem can lead to an underprovision of information. *Id.* at 503-505.

[25] Aho, *et al.*, The Federal Trade Commission Proposals for Credit Contract Regulations and the Availability of Consumer Credit, R-XI-10 at 123.

[26] For a fuller discussion of the disclosure alternative see Chapter XIII.

[27] NCCF Techical studies, Vol. V, at 5 (1972).

[28] David Caplovitz, *Consumers in Trouble: A study of Debtors in Default* 54 (1974).

Continued

Nonetheless, among a minority of debtors, default might have been prevented. Caplovitz found voluntary overextension was given as either a major or contributing cause of default by 25 percent of the debtors surveyed and debtor irresponsibility by 5 percent.[33] The NCCF found overextension to be the second or third most important cause of default (no distinction was made between voluntary and involuntary overextension) and lack of intention to repay as the last or next to the last most important cause of the 8 causes studied.[34] Moreover, some debtors can engage in precautionary behavior that will soften the impact of unfortunate events, and enable them to increase their chances of weathering adversity without defaulting on their obligations.[35]

One study on the record provides some insight in this regard. It examines the incidence of seven economically traumatic events in a representative sample of American families over a five-year period. Events studied were firings, unemployment, underemployment, evictions, unplanned emergency expenditures, unplanned children, and illness resulting in two or more weeks absence from work. The study found that over a five-year period almost all households experience at least one of the listed events. A majority experience four or more.[36]

Default, however, is a far less common experience. Data on automobile loans, for example,[37] indicates a yearly default rate which fluctuates between 3 and 6 percent, depending on the general state of the economy.[38] Robert Shay, Columbia University Business School, testified for NCFA that at any given time about 7 percent of finance company accounts were 60 or more days past due.[39] He suggested that these borrowers are most likely to be subject to creditor remedies.[40] Creditors other than finance companies have lower delinquency rates than do finance companies.[41]

Although most consumers do not default, many defaults nonetheless occur. Moreover, the record demonstrates that among those defaults that occur, the majority are not reasonably avoidable by consumers. Instead, default is a response to events that are largely beyond the consumer's control. Precautions can reduce the risk of default, but no reasonable level of precautions can eliminate the risk. Moreover, some consumers are unable to take various precautionary steps.[42] Thus, consumers cannot reasonably avoid the harsh consequences of creditors' remedies by avoiding default.

IV. Confessions of Judgment

Section 444.2(a)(1) of the rule provides that it is an unfair act or practice for a lender or retail installment seller to take or receive from a consumer an obligation that constitutes or contains a cognovit, confession of judgment (for purposes other than executory process in the state of Louisiana),[1] warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

A. Nature of the Practice

The cognovit is a legal device whereby the debtor, by means of a provision included in the contact, consents, in advance to the creditor obtaining a judgment without prior notice or hearing. The debtor either confesses judgment in advance of default or authorizes the creditor or an

[22] Caplovitz' results are summarized as follows:

MAJOR CATEGORIES OF REASONS FOR DEFAULTS

(percent)

	1st reason	2nd reason	3rd reason	Total reason	Total *
Debtors mishaps and shortcomings:					
Loss of income	43	18	10	24	48
Voluntary overextension	13	23	32	17	25
Involuntary overextension	5	12	7	7	11
Marital instability	6	4	5	5	8
Debtor's third parties	8	4	6	6	9
Debtor irresponsibility	4	2	.....	4	5
Creditor may be implicated:					
Fraud, deception	14	13	15	14	19
Payment misunderstandings	7	3	.....	6	8
Partial late payments	.....	15	6	5	7
Item returned to creditor	(*)	6	14	2	4
Harassment by creditor	.....	1	5	1	1
All other (miscellaneous)	1	.....	.....	(*)	(*)
Total percent	101	101	100	101	145
N	(1,320)	(570)	(110)	(2,000)	(1,326)

* Signifies less than ½ of 1 percent.
*Total individuals giving reason as percent of total number of individuals in study.
Id. at 53.

[29] *Id.* at 58. "Adverse employment change" was the primary reason for about half of the income loss in the study, while illness accounted for another third.

[31] More complete results can be found in the following table:

MAJOR REASONS CREDITORS REPORT HAVE CAUSED DEBTORS TO FAIL TO MEET CONTRACTUAL OBLIGATIONS

Major reasons	Banks (798 responses)	Finance companies (218 responses)	Retailers (141 responses)
Unemployment	1	2	1
Overextension	2	2	3
Illness of debtor	3	3	2
Separation	4	4	4
Illness in family of debtor	5	6	6
Divorce	6	5	5
Lack of intention to repay—"deadbeat"	7	8	7
Family relocation	8	7	8

See: NCCF Technical Studies, Vol. V, *Supra* note 27, at 9.

[32] For example, Caplovitz interviewed debtors in default and asked; "What were the main reasons why you stopped making payments on the ("merchandise/loan)?" A typical response was: "I got sick and didn't work for a while and there were too many bills to keep up." Is the cause of this default involuntary overextension or illness? Such distinctions are difficult to make and Caplovits acknowledges that his coding decisions "were to some extent arbitrary." D. Caplovitz, *supra* note 28, at 49–51. In addition, there may be response bias as debtors may tend to underestimate their own responsibility in causing default.

[33] *See supra* note 29.

[34] *See supra* note 31.

[35] For example, one witness stated that a major cause of default with respect to automobile loans was the uninsured collision. He added that if the car had been insured when damaged, repairs would have been made at the expense of the insurance company, and there would have been no default. Curtis E. McCalip, Northeast Ford, Tr. 11531–32.

[36] Data were taken from the "Panel Study of Income Dynamics," a continuing longitudinal study project of the University of Michigan Survey Research Center, R–XIII–4 at 6–8; and from E. Ehrlich, *Involuntary Disruptions of "Life-Cycle" Plans,* in *Five Thousand American Families—Patterns of Economic Progress, Analyses of the First Six Years of the Panel Study of Income Dynamics,* Vol. III (G. Duncan and J. Moran, eds. 1975).

[37] Reliable data for overall default rates are not available.

[38] American Bankers Association (ABA) Installment Lending Division, "Delinquency Rates on Bank Installment Loans", various years. *See also,* R–XI–16; R–I(a)–816 at 48; R–I(a)–812 at 5.

[39] HX–494 at 24.

[40] *Id.* at 23. These figures may, however, understate the number of consumers who become delinquent during the term of a credit obligation. Thus, Robert Mallock of Beneficial Management Corporation testified that about 30 percent of Beneficial accounts become delinquent in the course of a year. Tr. 9580.

[41] As of the end of 1976, federal credit unions had an over 60 day delinquency rate of 3.7 percent of the number and 2.2 percent of the amount of loans outstanding. 1976 Annual Report of the National Credit Union Administration at 7–8. In the third quarter of 1976, bank installment loan 30 days delinquent rates were about 2.4 percent, down from a high of slightly over 3 percent at the beginning of 1975. ABA, "Delinquency Rates of Bank Installment Loans," (Bulletin No. 405, Third Quarter 1976), based on weight average of eight loan types. Personal loan delinquency rates were somewhat higher, at about 3.1 percent in the third quarter of 1976.

[42] *See, e.g.,* Renee H. Reixach, Greater Upstate Law Project, XV–315 at 1155; Joanne S. Faulkner, New Haven Legal Assistance Association, Inc., XV–150 at 395.

[1] The exception provided for Louisiana is discussed *infra* at notes 103–105 and accompanying text.

attorney designated by the creditor to appear and confess judgment against the debtor.[2] Unless the contract so provides, default is not a necessary condition precedent to the entry of judgment. The judgment may be taken by any person holding the note. At common law it operates to cut off the opportunity to contest jurisdiction or venue or to present any claims or defenses that the debtor may have.[3] Judgment is rendered for the amount due shown on the face of the note plus any other charges authorized, such as attorney fees and any court costs. It can be converted into a lien on the debtor's property, which subjects debtor's property to seizure and sale to satisfy the judgment.

Because the common law cognovit is a drastic remedy, its use today typically is constrained to some extent by statutory safeguards in those states where it is permitted and used. In such states, as at common law, judgment is entered against the debtor by the filing of a confession. The filing creates a lien on the debtor's property, subjecting it to execution in satisfaction of the debt. Unlike its operation at common law, however, the entry of judgment does not cut off all opportunity to contest the creditor's claim. The judgment debtor has the right to petition the court and, if the debtor presents a prima facie case, the court will reopen the judgment.[4] The debtor may then raise any substantive defenses to the creditor's claim that could have been used in the debtor's defense in a trial on the merits.[5] The lien of the judgment or of any levy or attachment is preserved while these proceedings are pending.

Although such statutory safeguards provide debtors with some means of protecting their property interests, they fail to provide the full due process protection required by the fourteenth amendment to the Constitution. The essence of the due process clause as it relates to property is to protect the individual from wrongful deprivation by, or through the offices of, the government.[6] Such protection is achieved by giving individuals notice of the claims against them,[7] and the opportunity to contest those claims at a hearing.[8] If the hearing is to achieve its purpose, then, in anything other than an emergency situation it must precede the property deprivation.[9]

Judgment debtors whose property is encumbered through the existence of a creditor's lien lose the full use and enjoyment of their property. Debtors are unlikely to be able to sell it, for example, or to use it as collateral while it is subject to a lien. Although the debtor may eventually prevail on the merits and dissolve the lien, the post-judgment rights provided by statute cannot cure the deprivation experienced while the action is pending. Even a temporary and non-final deprivation of the use of one's property is a matter of constitutional significance and invokes the protection of the due process clause.[10] Because state statutory protections governing cognovits arise only after debtors are deprived of the full use of their property, they cannot guarantee full due process protection. The right to a hearing before deprivation occurs is essential.[11]

The contractual waiver of one's right to due process is constitutionally permissible, provided that the waiver is made voluntarily, knowingly, and intelligently.[12] Thus, in a commercial context, the use of confessions of judgment has been upheld where the facts demonstrated that this standard had been met.[13] A consumer who is unaware of the existence or meaning of a cognovit clause, however, cannot be said to have waived due process rights voluntarily, knowingly, and intelligently by signing a contract that includes such a clause.[14]

Of the creditor remedies addressed by the rule, confessions of judgment are least likely to be understood by consumers.[15] In many cases, consumers, especially low-income consumers, are not aware that cognovit clauses are in their contracts.[16] To the extent that they are aware, consumers rarely understand the significance of these clauses because they are worded in obscure technical language and because the concept of judgment by confession conflicts with the common understanding of basic due process rights.[17] The record shows that, for these and other reasons (discussed in Chapters II and III above), consumers do not bargain over this provision or shop for contracts without it. The Commission finds, therefore, that consumers cannot reasonably avoid the injury caused by cognovits.

B. State Law

Virtually all states currently impose some statutory restrictions on the use of cognovit clauses. The protection that such statutes provide is far from uniform, however. A number of states either bar the use of confessions of judgment altogether or prohibit their use in connection with any claim arising out of a consumer credit transaction.[18] Other states restrict their use in specified classes of transactions, such as retail installment sales contracts, but do not impose a general prohibition on

[2] A warrant of attorney authorizing judgment is perhaps the most powerful and drastic document known to civil law. The signer deprives himself of every defense and every delay of execution, he waives exemption of personal property from levy and sale under the exemption laws, he places his cause in the hands of a hostile defender. The signing of a warrant of attorney is equivalent to a warrior of old entering a combat by discarding his shield and breaking his sword.

Cutter v. *Latshaw*, 374 Pa. 1, 4–5, 97 A.2d 234, 236 (1953).

[3] *Jones* v. *John Hancock Mut. Life Ins. Co.*, 269 F. Supp. 930, 935 (W.D. Mich. 1968), *aff'd*, 416 F.2d 829 (6th Cir. 1969). *See also*, Presiding Officer's Report at 79.

[4] This discussion of statutory safeguards reflects the law governing confessions of judgment in Pennsylvania, *see infra* notes 33–45 and accompanying text. In other states, procedural safeguards governing the use of cognovits are similar but variations exist. *See, e.g.*, discussion of statutory safeguards in Delaware and Virginia *infra* notes 29–32 and accompanying text.

[5] Absent a defense, however, judgment will not be reopened merely because the debtor has a counterclaim or set-off that he could have joined with his defense. *J.M. Korn & Son, Inc. v. Fleet Air Corp.*, 300 Pa. Super. 458,——, 446 A.2d 945, 947 (1982). Additional limits on the debtor's right to a trial de novo are discussed *infra* at notes 43–47 and accompanying text.

[6] *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

[7] *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 (1863).

[8] *Grannis v. Ordean*, 234 U.S. 385, 394 (1914).

[9] *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972); *Bell v. Burson*, 402 U.S. 535, 542 (1971).

[10] *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 342 (1969); *North Georgia Finishing v. DiChem, Inc.*, 419 U.S. 608 (1975).

[11] *See Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

[12] *Compare Overmeyer v. Frick*, 405 U.S. 174, 187 (1971) *with Swarb v. Lennox*, 405 U.S. 191 (1971).

[13] *See Overmeyer v. Frick*, 405 U.S. 174 (1971).

[14] *See Swarb v. Lennox*, 405 U.S. 191, 197–83 (1972). State statutes governing confessions of judgment do not generally provide for a hearing on the question of waiver. *But see* Del. Code Ann. tit. 10, section 3333 (1974), which does provide for such a hearing.

[15] Presiding Officer's Report at 90.

[16] *See Swarb v. Lennox*, 405 U.S. 191, 197 (1972); *Id.* at 193 (citing a 1963 study conducted by David Caplovitz of 245 confessed-judgment debtors in Philadelphia, only 14 percent of whom knew that the contracts they had signed contained cognovit clauses).

[17] *E.g.*, Carolyn C. McTighe, Legal Aid Society of Cleveland, R–I[c]–33; Jules S. Littman, Middlesex County Legal Service Corporation, R–I[c]–23 at 3; Eugene Thiroff, Land of Lincoln Legal Assistance Foundation, Tr. 3359.

[18] *See, e.g.*, Colo. Rev. Stat. sections 5–2–415, 5–3–407 (1973); D.C. Code Ann. section 28–3304 (1981); Idaho Code section 28–43–305 (Supp. 1983); Ill. Ann. Stat. ch. 110, section 2–1301 (Smith-Hurd 1983); Ind. Code Ann. sections 24–4.5–2–415, 24–4.5–3–407 (Burns 1982); Kan. Stat. Ann. section 16a–3–306 (1981); Me. Rev. Stat. Ann. tit. 9–A, section 3.306 (1980); Mass. Gen. Laws Ann. ch. 231, section 13A (West 1974); N.M. Stat. Ann. sections 39–1–16, 39–1–18 (1981); Ohio Rev. Code Ann. section 2323.13 (Page 1981); Okla. Stat. tit. 14A, sections 2–415, 3–407 (1983); S.C. Code Ann. sections 37–2–415, 37–3–407 (Law. Co-op. 1976); Utah Code Ann. sections 70B–2–415, 70B–3–407 (1980); Vt. Stat. Ann. tit. 9, section 2455 (1970); W. Va. Code section 46A–2–417 (1980); Wisc. Stat. Ann. section 406.25 (West 1977), section 422.405 (West 1974); Wyo. Stat. sections 40–14–249, 40–14–333 (1977).

their use with respect to all consumer transactions.[19] In addition, a significant number of states prohibit small loan licensees from utilizing confessions of judgment in loan agreements with consumers.[20] The statutory definition of a small loan licensee varies from state to state, however.[21] Thus, the protection such provisions afford consumers varies accordingly.

Other states authorize confessions of judgment, but only if they are executed after action on the underlying obligation has been instituted.[22] The hallmark of the common law cognovit is the waiver of due process rights before the time that the debtor needs their protection. Because such statutes prohibit waiver of these rights before commencement of an action against the debtor, in effect they bar the common law cognovit and the ills traditionally associated with it.[23] Before an action can be commenced the debtor must receive notice, and the right to a hearing necessarily follows. If at this point the debtor chooses to confess judgment, the waiver of the right to a trial on the merits may be assumed to have been made intelligently and voluntarily. A few other states restrict confessions of judgment by requiring that they be entered into after default, rather than after institution of suit,[24] or by requiring that the debtor appear personally in court to confess judgment if he or she chooses.[25]

Another group of states restricts confessions of judgment by authorizing their use but requiring that the debtor sign a verified statement under oath attesting to the existence of the obligation due or to become due.[26] Such provisions may help to focus the debtor's attention upon the existence of the cognovit clause at the time due process rights are waived. They do not ensure that the waiver is made intelligently, however, or at a time that the waiver has meaning for the debtor.[27]

A few states provide for the entry of a judgment by confession without requiring verification of the confession under oath and also without providing the debtor with notice and a hearing at the time of entry. Instead, these states rely on post-judgment procedures to alleviate wrongful deprivation that the debtor may have suffered.[28] The required procedures provide varying degrees of protection to the debtor. Delaware, for example, provides for a hearing on the question of whether the debtor understood the constitutional rights waived at the time the judgment was confessed.[29] Before judgment becomes final the court clerk must send notice to the debtor by certified mail of the opportunity for such a hearing. In addition, the debtor may seek to vacate or reopen the judgment and may present any defenses not deemed to have been waived, *i.e.*, any defenses of which the debtor had no knowledge at the time of the confession of judgment or that arose subsequently.[30]

Virginia law provides that any confessed judgment may be reduced or set aside within twenty-one days following notice to the debtor of its entry on any ground that would have constituted an adequate defense or set-off to the underlying claim.[31] It also requires the court clerk to notify the debtor of the right to contest judgment on these grounds.[32] Unlike Delaware, however, Virginia does not specifically provide for a hearing on the preliminary question of intelligent or understanding waiver.

Pennsylvania also authorizes the entry of judgment by confession against a debtor without advance notice and hearing. Although some statutory restrictions apply,[33] it appears that

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[19] *See, e.g.*, Conn. Gen. Stat. Ann. section 42-88 (1958) (confession of judgment void in retail installment contract or installment loan contract); Hawaii Rev. Stat. section 476-13 (1976) (void in retail installment contract); Md. Com. Law Code Ann. sections 12-601, 12-607 (1983) (prohibited in retail installment sales agreements between buyer and seller or sales finance company); Mich. Comp. Laws Ann. section 445.852 (1976), section 445.884 (Supp. 1983-84) (prohibited in retail installment contract or retail charge agreement for goods or services); Minn. Stat. Ann. section 325G.16 (West 1981) (prohibited in consumer credit sale for goods or services); N.H. Rev. Stat. section 361-A:7 (1968) (void in retail installment contract for purchase of motor vehicle); N.J. Rev. Stat. section 17:16C-37 (Supp. 1983-84) (void in retail installment contract or retail charge account); N.J. Rev. Stat. section 17:16C-64 (1975) (void in home repair contract); N.Y. Pers. Prop. section 403 (Consol. 1976) (prohibited in retail installment contracts); N.Y. Civ. Prac. Law section 3201 (McKinney 1970) (void if executed before default in connection with the purchase of consumer goods for $1500 or less); N.C. Gen. Stat. sections 25A-2, 25A-18 (Supp. 1983) (void in connection with claim arising out of a consumer credit sale for goods or services); N.D. Cent. Code section 51-13-02.1 (1982) (prohibited in retail installment contracts); Or. Rev. Stat. section 83.670 (1973) (unenforceable in retail installment contract for motor vehicle); Tex. Rev. Civ. Stat. Ann. Art. 5069-6.05 (Vernon Supp. 1982-83) (prohibited in retail installment contract or retail charge agreement).

[20] *See, e.g.*, Ala. Code section 5-18-16 (1975); Ariz. Rev. Stat. Ann. section 6-629 (1974); Cal. Fin. Code section 22467 (Deering Supp. 1983); Conn. Gen. Stat. Ann. section 36-238 (West 1981); Fla. Stat. Ann. section 516.16 (West 1972); Hawaii Rev. Stat. section 409-15 (1976); Ky. Rev. Stat. Ann. section 288.580 (Bobbs-Merrill Supp. 1982); Md. Com. Law Code Ann. section 12-311 (1983); Mich. Comp. Laws Ann. section 493.12 (Supp. 1983-84); Minn. Stat. Ann. section 56.12 (West 1970); Miss. Code Ann. section 75-67-127 (Supp. 1983); Mont. Code Ann. section 32-5-305 (1981); Neb. Rev. Stat. section 8-447 (1977); Nev. Rev. Stat. section 675.350 (1979); N.H. Rev. Stat. Ann. section 399-A:5 (1968); N.J. Rev. Stat. section 17:10-15 (Supp. 1983-84); N.Y. Banking Law section 353 (Consol. 1970); N.C. Gen. Stat. section 53-181 (1982); N.D. Cent. Code section 13-03-15 (1981); R.I. Gen. Laws section 19-25-24 (1968); Tex. Rev. Civ. Stat. Ann. Art. 5069-3.20 (Vernon 1974); Vt. Stat. Ann. tit. 8, section 2222 (1970); Va. Code section 6.1-283 (1983); Wash. Rev. Code section 31.08.150 (Supp. 1983-84).

The Presiding Officer indicated that 29 states bar the use of confessions of judgment by small loan licensees. Presiding Officer's Report at 81. In the interim, six states—Idaho, Indiana, Oklahoma, South Carolina, Utah, and Wyoming—have replaced such statutes with statutes that prohibit confessions of judgment in all consumer loan transactions. Pennsylvania also repealed its statute invalidating confessions of judgment in small loan transactions. Pennsylvania's statutory limitations on confessions of judgment are discussed *infra* at note 33. California and Rhode Island were not included in the Presiding Officer's total. These states prohibit confessions of judgment in most small loan transactions, however.

[21] *Compare* Mont. Code Ann. section 32-5-103 (1981) (licensee is any person engaged in business of making loans or advances of money on credit in amounts of $25,000 or less) *with* Hawaii Rev. Stat. section 409-15 (1976) (licensee is any person engaged in business of making loans of money, credit, goods, or things in action in the amount or value of $300 or less).

The statutory definition of a licensee typically excludes federal and state banks, trust companies, savings or building and loan associations and credit unions. It often also excludes pawn-brokers and retail sellers. *See, e.g.*, Ariz. Rev. Stat. Ann. section 6-602 (Supp. 1983-84); Mont. Code Ann. section 32-5-103 (1981).

[22] *See, e.g.*, Ala. Code section 8-9-11 (1975); Fla. Stat. Ann. section 55.05 (West 1969); Ga. Code Ann. section 110-601 (1973); Ky. Rev. Stat. Ann. section 372.140 (Bobbs-Merrill 1970); Miss. Code Ann. section 11-7-187 (1972); Or. R. Civ. P. 73 (1981); Tenn. Code Ann. section 25-2-101 (1980); Tex. Rev. Civ. Stat. Ann. Art. 2224.

[23] As a result, confessions of judgment obtained pursuant to such statutes are not prohibited by this rule provision. *See infra* note 108 and accompanying text.

[24] *See, e.g.*, Ariz. Rev. Stat. Ann. section 44-143 (1982); Iowa Code Ann. section 537.3308 (West Supp. 1983-84).

[25] *See, e.g.*, Ark. Stat. Ann. section 29-301 (1979); Neb. Rev. Stat. section 25-1309 (1979).

[26] *See, e.g.*, Alaska Stat. section 9.30.050, Alaska R. Civ. P. 57 (c) (1973); Cal. Civ. Proc. Code sections 1132-1134 (Deering 1981) (confession may be entered only if an attorney independently representing the debtor signs a certificate that the attorney has examined the proposed judgment, has advised the debtor with respect to waiver of rights and defenses, and has advised the debtor to utilize the procedure); Mo. Rev. Stat. sections 511.070-511.100 (1974); Mont. Code Ann. sections 27-9-101, 27-9-102 (1981); Nev. Rev. Stat. sections 17.090-17.110 (1979); S.D. Codified Laws Ann. sections 21-26-1—21-26-6 (1979); Wash. Rev Code sections 4.60.060-4.60.070 (1974).

[27] The California statute is an exception in requiring detailed procedures designed to ensure intelligent waiver. *See supra* note 26.

[28] *See, e.g.*, Del. Code Ann. tit. 10, sections 2303, 3908 (1974); Pa. Ct. R. Civ. P. 2950-2962 (West 1983); Va. Code sections 8.01-431—8.01-441 (1977).

[29] Del. Code Ann. tit. 10, section 3908 (1974).

[30] *Id.*

[31] Va. Code section 8.01-433 (1977).

[32] *Id.* at section 801-438.

[33] Pennsylvania law permits a creditor to take a confessed judgment from a debtor. It also permits the creditor to enter judgment against the debtor at any time before default and to use it to create a lien

Continued

confessions of judgment are used relatively frequently in this state.[34] Pennsylvania's procedural protections are more limited than those of Delaware and Virginia. In Pennsylvania, judgment is entered by the filing of a instrument confessing judgment or authorizing a third party to confess judgment against the debtor. Default is not a necessary condition precedent to the entry of judgment.[35] The court clerk must notify the defendant debtor of the entry of judgment and enclose copies of the documents filed in support of judgment. Such notice is sent by ordinary mail rather than certified mail, however, and no return receipt is required.[36] Thus, the court has no assurance that the debtor has, in fact, received notice. Failure to mail the notice and documents does not affect the lien against the debtor's property imposed by the judgment.[37] As a result, debtors may be wholly unaware that their property is subject to a lien.

Pennsylvania law provides for striking off or reopening of a judgment entered by confession.[38] To strike a judgment the defendant's petition must assert defects appearing on the record. To reopen a judgment the defendant's petition first must assert prima facie grounds for relief. The existence of offsetting claims or counterclaims that the debtor has against the creditor does not constitute grounds for reopening.[39] All defenses that are not included in the petition are waived. The court determines whether to reopen the judgment on the basis of the defendant's petition, the plaintiff's answer, and on testimony, depositions, and admissions. There is no statutory provision for a hearing on the petition to reopen. Only if the pleadings produce evidence that would require submission of the issues to a jury will the court reopen the judgment.[40] Thus, the reopening of a judgment entered by confession involves a preliminary pleading contest in which the debtor has the burden of persuasion.[41]

In the event that the court does reopen the judgment, the lien of the judgment or of any execution issued on it is unimpaired, although the court may stay execution pending final disposition of the proceeding.[42] This is a discretionary matter, however; the court is not required to stay execution. No further pleadings are permitted after reopening.

Although these statutory provisions afford some means of contesting a judgment that has been improperly entered, they fail to ensure that debtors' rights will be protected adequately. This is true because, as noted above, there is no assurance that debtors will receive notice of the entry of judgment. Even when debtors do receive notice of the entry of judgment, the law does not require that they be notified of the right to contest the judgment or the grounds upon which they may do so.[43] Evidence in the rulemaking record shows that debtors may fail to recognize the implication of judgments entered by confession against them, as well as the means that they may use to contest such judgments.[44] Moreover, ignorance of the rights that were waived at the time of confession is not a statutory defense in Pennsylvania.[45] Finally, debtors' due process rights are inadequately protected by Pennsylvania statute because the law permits encumbrance of their property before, rather than after, a hearing on the merits of the creditors' claims.

It is also apparent that Pennsylvania's post-judgment remedies do not provide the procedural equivalent of a trial de novo to debtors. A creditor in Pennsylvania who has not obtained judgment by confession must seek judgment through a civil suit.[46] The action is commenced when the creditor files a complaint. The district justice sets a date for hearing, to occur within sixty days of the filing, and notes it on the complaint. The complaint is then served personally upon the debtor, along with a notice of the right to contest and the time period for doing so. The notice includes a prominent warning that failure to appear will result in the entry of a default judgment. Debtors are informed that they may enter a defense and may also file a complaint raising a cross-claim against the creditor. Such a complaint may assert any claim within the court's jurisdiction. The district justice who conducts the hearing has authority to subpoena any necessary witnesses. The court issues a judgment within five days after the hearing. Costs are awarded to the prevailing party.[47]

This procedure is simple, straightforward, and expeditious. It ensures service of process upon the debtor. It provides full notice of the debtor's right to defend, the time and place for doing so, and the consequences of failure to appear. Because depositions and interrogatories are not permitted, the burden and expense of presenting a defense are negligible.

The reopening of a confessed judgment involves a preliminary pleading contest in which the debtor has the burden of persuasion. By contrast, to defend against a creditor's claim in a trial de novo under the procedures outlined above, the debtor may simply appear and present any defenses to the district justice. No lien may be created upon the debtor's property until after the debtor has had this opportunity.

Notwithstanding a meritorious defense, the procedural burden of reopening a judgment under Pennsylvania law requires a greater sophistication and expenditure of

on the debtor's real and personal property. The debtor's residential real estate is protected from execution on the basis of such a lien, however, in that execution may not occur until after a trial on the merits of the claim. 41 Pa. Cons. Stat. Ann. section 407 (Purdon Supp. 1983–84).

Similarly, execution may not be had on such a basis as to any of the debtor's property without first proceeding as in any original action when the claim arises out of a retail installment sale, contract or account. 69 Pa. Cons. Stat. Ann. section 1605 (Purdon Supp. 1983–84). This chapter prohibits the use of a power of attorney to confess such a judgment, *see id.* at section 1401(e), but not the taking of confession from a debtor.

In contrast, home improvement contracts may contain a power of attorney clause authorizing confession of judgment. Judgment may be entered before default, thereby creating a lien, but execution before default is prohibited. Pa. Stat. Ann. tit. 73, section 500–406 (Purdon 1971).

[34] *See* discussion of prevalence *infra* Section C.

[35] Pa. Ct. R. Civ. P. 2951 (West 1983).

[36] Pa. Ct. R. Civ. P. 236 (West 1983).

[37] *Id.*

[38] Pa. Ct. R. Civ. P. 2959 (West 1983).

[39] *See supra* note 5.

[40] Pa. Ct. R. Civ. P. 2959 (West 1983). A "defendant must allege a meritorious defense to liability on the note, and must produce evidence sufficient to present a jury question and avoid a directed verdict." *Federal Deposit Insurance Corp. v. Barness*, 484 F. Supp. 1134, 1141 (E.D. Pa. 1980).

[41] "The placing of this burden upon the debtor is in direct contrast to the burdens in a normal or pre-judgment creditor-debtor action. In those cases instituted by a creditor against a debtor, the creditor is considered the proponent of a claim and the burdens are his." *Swarb v. Lennox*, 314 F. Supp. 1091 (E.D. Pa. 1970), *aff'd*, 405 U.S. 191 (1972).

[42] 7 Stand. Pa. Prac 172, 174, sections 138, 142.

[43] This contrasts with Virginia law, for example, which requires such notification to the debtor. *See supra* note 32 and accompanying text.

[44] *See, e.g.*, Henry J. Sommer, Community Legal Services of Philadelphia, Tr. 10220; Carol Knutson, Neighborhood Legal Services Association, Pittsburgh, Tr. 11104; Herschel T. Elkins, Office of the Attorney General of California, HX-211, Tr. 5290-91.

[45] Bernard A. Podcasy, Legal Services of Northeastern Pennsylvania, Tr. 6329. This contrasts with Delaware law, for example, which provides for a preliminary hearing on the issue of waiver. *See supra* note 29 and accompanying text.

[46] The civil procedure discussed in this section is the applicable procedure in cases brought before Pennsylvania district courts, which have jurisdiction over claims not exceeding $4,000. *See* Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings Before District Justices, Pa. Ct. R. Civ. P. 301–332, (West 1983). Claims that exceed $4,000 must be brought in the Court of Common Pleas.

[47] If judgment is entered against the debtor, execution may be ordered by the district justice; alternatively, the creditor may file the judgment with the Court of Common Pleas. Creditors wishing to execute upon real property must choose the latter alternative. *See id.*, Pa. Ct. R. Civ. P. 402, 403.

resources by the debtor than would be required in a trial on the merits in the first instance. For these reasons, Pennsylvania's post-judgment remedies provide an inadequate substitute for a trial de novo and fail to guarantee that debtors' rights will be protected to the degree that due process requires.

C. Prevalence

There is limited record evidence with respect to the prevalence of cognovit clauses in consumer credit contracts on a nationwide basis. Both legal aid attorneys and members of the finance industry testified to the use of confessions of judgments in Pennsylvania,[48] Illinois,[49] and Louisiana.[50] Other evidence points to frequent use in Pennsylvania, Illinois, and Ohio.[51] There was also testimony that in Maryland, although confessions of judgment are prohibited in many consumer credit transactions, their use in other kinds of consumer contracts remains common.[52]

Survey evidence exists concerning the prevalence of cognovit clauses but does not break down the results by state. A survey of its members conducted by the Consumer Bankers Association, for example, shows that approximately 20 percent of banks responding to the survey included cognovit clauses in the majority of their contracts where permitted by law.[53] A survey of legal aid attorneys indicates that, where permitted by law, cognovit clauses were utilized in 20 percent of loan agreements by credit unions, 21 percent by finance companies, 16 percent by banks, and 30 percent by creditors generally.[54]

A National Consumer Finance Association (NCFA) survey of over 13,000 consumer accounts indicates that cognovit clauses were used in 3.7 percent of consumer credit contracts used by its responding members and that all but one of the contracts came from Illinois or Louisiana.[55] A Commission staff survey of 1,001 consumer account files subpoenaed from twelve large consumer finance companies in thirty-five states found cognovit provisions in seventy-four contracts (7.3 percent).[56] This figure was thought to underestimate the true incidence of cognovit provisions in the sample, however.[57] A more reliable Bureau of Social Science Research (BSSR) survey of 1,001 consumer account files drawn from the same group, but including only nine consumer finance companies in nineteen states, found cognovit provisions in ninety-six contracts or 9.5 percent of the sample.[58] The results of both samples show that cognovits appeared in contracts from Colorado, Illinois, Indiana, Louisiana, New Jersey, Michigan, Ohio, Tennessee, and Virginia.[59] Although Louisiana, Illinois, and Ohio account for the majority of the cognovit provisions in the sample,[60] consumer account files from these states are over-represented in the sample. Eleven percent of the consumer account files were from Ohio, for example.[61] Because the consumer files upon which these surveys were based were not drawn from all states and because some states were disproportionately represented in the file samples, the results do not necessarily reflect those states in which cognovits were used most frequently nor the frequency of their use in a given state. They do suggest, however, that the use of cognovits may be somewhat more widespread geographically than the NCFA survey would indicate.[62]

Finally, a 1970 industry survey conducted by the National Commission on Consumer Finance showed that 17 percent of large bank respondents and 17 percent of large finance companies stated cognovits to be a highly valuable provision in contracts for unsecured cash loans. This suggests that, among these respondents, confessions of judgment are employed on a regular basis.[63]

No precise quantification of the extent to which cognovits are used in consumer credit contracts can be made on the basis of record evidence. Evidence demonstrates their use in Pennsylvania, as well as in Louisiana, Ohio, Illinois and, at least to a limited extent, in several other states. There also is evidence to show that in states where their use is permissible, they are used with some frequency.[64] Beyond this, there exists the issue of full faith and credit that must be paid by the courts of one state to the judgments of the courts of another state.[65] To the extent that confessions of judgment are entered on the basis of the laws of a state in which they are permissible, they may be

[48] Carol Knutson, Neighborhood Legal Services Association, Pittsburgh, Tr. 11121 (100 cases in 3 years); Bernard A. Podcasy, Legal Services of Northeastern Pennsylvania, Tr. 9835 (3 current cases, perhaps 50 others); William T. Gwennap, Pittsburgh National Bank, Tr. 12232–34 (PNB uses cognovits in home improvement loans; other banks in Pennsylvania also use them); Leslie R. Butler, Consumer Bankers Association, HX–488, Tr. 11587 (in Pennsylvania many consumer contracts contain cognovits).

[49] Jerrold Oppenheim, Legal Assistance Foundation of Chicago, HX–79, Tr. 2147. Confessions of judgment have since been prohibited in consumer transactions in Illinois.

[50] Jane Johnson, New Orleans Legal Assistance Corp., Tr. 407–08; Herschel C. Adcock, Louisiana Consumer Finance Association, Tr. 1210 *et seq.*; Donald S. Wingerter, Louisiana Savings and Loan League, HX–437, Tr. 10590 *et seq.*

[51] *See* Hopson, *Cognovit Judgments: An Ignored Problem of Due Process and Full Faith and Credit*, 29 U. Chi. L. Rev. 111, 115 (1961) (these states produce the "overwhelming bulk" of cognovit judgments). Ohio, like Illinois, now prohibits the use of a warrant of attorney to confess judgment in instruments arising out of a consumer loan or transaction.

[52] H. Robert Erwin, Consumer Law Center, Legal Aid Bureau, Baltimore, Tr. 10034 (*e.g.*, home improvement contracts).

[53] Richard K. Slater, Consumer Bankers Association, HX–490, Tr. 11630. Mr. Slater, indicated that the banks responding to the survey held over 15 percent of all consumer credit outstandings in the types of credit extension that the survey addressed and a much larger market share overall. Thus, he believed that the survey responses were respresentative of the overall marketplace, Tr. 11616–17. Although Mr. Slater was unable to present the results on a state-by-state basis, he indicated that the number of respondents was too great to reflect banking practice only in Pennsylvania. Tr. 11637. He noted that a number of the respondents did business in Michigan, Illinois, and New York. Tr. 16642.

[54] National Consumer Law Center (NCLC) Survey of Credit Contract Practices (1977), HX–467 at 44. Although 105 consumer law specialists responded to this survey, confessions of judgment were not lawful in many of the respondents' states. The estimate of prevalence reflects the opinions of the 22 respondents in whose states the practice was permitted, but results were not tabulated by state. Thus, the 20 percent estimate of prevalence may reflect the practice of creditors in a relatively small number of states. *See* Presiding Officer's Report at 302–04 for an evaluation of this survey as a whole.

[55] Robert P. Shay, National Consumer Finance Association, HX–494 at 33, Tr. 12053.

[56] For an explanation of the methodology employed and the results of this and the BSSR survey *see* R–XI–153 at 3–5, 9–10. For criticism of the underlying sampling methodology, *see* Robert P. Shay, National Consumer Finance Association, HX–494 at 4–10.

[57] *See* R–XI–153 at 4–5. Because many of the files surveyed by the Commission staff were incomplete, it was not possible to determine in all cases whether a given contract provision was included. In addition, if a provision was found in all contracts from a given office, staff did not attempt to code each incidence of the provision. The BSSR survey, in contrast, used complete files and followed a formal coding procedures.

[58] *Id.* at 9.

[59] *Id.*, printout A at 14–21, printout B at 1–6.

[60] *See id.*

[61] *Id.* at 3, n.4.

[62] Alternatively, the differences in survey results may reflect changes in state law or creditor use of cognovits that took place between 1973, when the Commission gathered its survey data, and 1977, when the NCFA conducted its survey.

[63] National Commission on Consumer Finance (NCCF), Technical Studies, Vol. 5, Tables 25, 27 (1972).

[64] *See, e.g.*, NCLC survey, *supra* note 54 and accompanying text; Thomas E. Raleigh, Administrator, Collection Agency Act, Illinois, HX–93, Tr. 2433; Jerrold Oppenheim, Legal Assistance Foundation of Chicago, Tr. 2147; Herschel C. Adcock, Louisiana Consumer Finance Association, Tr. 1211; William T. Gwennap, Pittsburgh National Bank, Tr. 12232–34.

[65] For a discussion of the applicability of the full faith and credit clause to cognovit judgments, *see* Hopson, *supra* note 51 at 143–56; Note, *Poverty Law: Judgments by Confession*, 49 Tex. L. Rev. 169, 171 (1970).

enforceable in other states where they would not otherwise be permissible.

On balance it appears that cognovits are prevalent in Pennsylvania and may be used in other states as well, such as Virginia, where they are permitted.[66] Despite the fact that their use has been prohibited or severely restricted in most states, the Commission finds that there is sufficient evidence of continued use of cognovits to warrant a rule addressing that use.

D. Consumer Injury

Although procedures for reopening confessions of judgment exist, the absence of notice and a hearing prior to the entry of the judgment causes significant consumer injury. Cognovit clauses typically are worded in arcane language and may appear in small print.[67] Record evidence supports the conclusion that debtors are unaware that they have agreed to such clauses and that they waive due process rights by doing so.[68] When debtors receive notice of a judgment entered against them, they may not understand its import or that they must act affirmatively to raise any defenses against it.[69] This problem is exacerbated by the fact that many states, including Pennsylvania, do not require notice informing the debtor of the right to contest the judgment or the grounds for doing so.[70] As a result the debtor may fail to respond despite having valid defenses to the judgment.[71] The rulemaking record shows that judgments entered by confession frequently are invalid on their face.[72] It also shows that debtors frequently have some defense to the judgment.[73]

When debtors are not apprised of their rights and therefore fail to challenge facially invalid judgments or fail to asset valid defenses, the consumer injury is clear. The judgment debtor's property may be taken in satisfaction of a claim that would not survive judicial scrutiny at a hearing on its merits. Loss of this property causes economic hardship, since the debtor loses both its use and any equity in it. Moreover, consumers must replace any essential items that are seized, usually at a greater cost than they were credited with for the seized property. The economic injury, therefore, is substantial.[74]

Alternatively, if they have the resources to do so, consumers may simply pay judgment debts when threatened with execution or garnishment although they dispute the underlying claim.[75] Legal aid attorneys estimate that actual (or threatened) invocation of cognovits results in payment of disputed debts in a significant number of cases.[76]

Even when debtors understand their right to challenge the entry of judgment, post-judgment remedies of the sort provided by Pennsylvania statute do not make them whole. The procedure for reopening a judgment is complex and debtors are unlikely to succeed without incurring the cost of hiring an attorney.[77] In addition to legal fees, sheriff's costs and deposition and transcript costs are ordinarily required in a proceeding to strike or reopen.[78] Such costs are not necessarily incurred in a trial de novo.

In a proceeding to reopen, the debtor may assert the same affirmative defenses that could have been used in defending against an action on the underlying claim. However, in a proceeding to reopen the burden and expense of instituting litigation shift from the creditor, where they would lie absent the confession of judgment, to the debtor.[79] Because of the relative ease with which confessions of judgment may be entered, creditors may be tempted to use them indiscriminately.[80] To the extent that consumers must institute legal action to defend against unwarranted claims, they suffer considerable economic injury through the costs that they must incur.

Although consumers with meritorious defenses may ultimately succeed in vacating judgments against them, they are deprived of the full use of their property during the process. Under Pennsylvania law the entry of judgment creates a lien on the consumer's property and thus encumbers the right to use it.[81] Until such a lien is dissolved, the consumer's ability to use the property for collateral or to dispose of it is significantly impaired.[82] Moreover, because the lien is effective whether or not notice is mailed to or reaches the debtor,[83] debtors may learn of its existence only at the precise point at which they seek to use the property for such purposes.[84] By the time debtors succeed in dissolving the lien, the opportunity for which they intended to use the property may have passed. Consumers have no recourse for the economic injury that is suffered as a result. There is no statutory provision for an award of damages to a consumer

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[66] Record evidence also demonstrates their prevalence in Illinois and Ohio. Cognovits are no longer permitted in these states in consumer transactions, however. Although they are also prevalent in Louisiana, the rule will not prohibit their use in that state. *See infra* notes 103–105 and accompanying text.

[67] Carolyn C. McTighe, Legal Aid Society of Cleveland, R–I(c)–38; Henry J. Sommer, Community Legal Services of Philadelphia, Tr. 10980.

[68] Henry J. Sommer, Community Legal Services of Philadelphia, Tr. 10980, 10989; James D. Morris, Legal Services of Northeastern Pennsylvania, Tr. 9836; Herschel T. Elkins, Office of the Attorney General of California, Tr. 5290; Bernard A. Podcasy, Legal Services of Northeastern Pennsylvania, Tr. 9828; Eugene Thirolf, Land of Lincoln Legal Assistance Foundation, Tr. 3356.

[69] Carol Knutson, Neighborhood Legal Services Association, Pittsburgh, Tr. 11104; Carolyn C. McTighe, Legal Aid Society of Cleveland, R–I(c)–38.

[70] Carol Knutson, Neighborhood Legal Services Association, Pittsburgh, Tr. 11104. *Compare* Pennsylvania notice requirements, *supra* note 43 and accompanying text, *with* those of Delaware and Virginia, *supra* notes 30–32 and accompanying text.

[71] Henry J. Sommer, Community Legal Services of Philadelphia, Tr. 10980.

[72] In an investigative study of Chicago, Illinois, courts, 377 of 1774 confessed judgments filed during a two-week period in 1980 were invalid. *See* Hopson, *supra* note 51 at 122. Confessions of judgment are no longer permitted in Illinois, but this study demonstrates the potential for abuse that exists in states where they are permitted.

[73] Carol Knutson, Neighborhood Legal Services Association, Pittsburgh, Tr. 11102–03, 11121–22.

[74] *See, e.g., Carol Knutson, Neighborhood Legal Services Association, Pittsburgh, Tr. 11102; Jane Johnson, New Orleans Legal Assistance Corp., Tr. 413. See generally* Karl B. Friedman, Alabama Consumer Finance Association, Tr. 61; William Ballenger, Michigan Department of Licensing and Regulation, Tr. 6178; Tom D. McEldowney, Director, Idaho Department of Finance, Tr. 5939; Andrew Eiler, Consumer Affairs Department, United Auto Workers, R–I(d)–92.

[75] Henry J. Sommer, Community Legal Services of Philadelphia, Tr. 10989.

[76] Confessions of judgment are more commonly used in unsecured loans, *see* Robert P. Shay, National Consumer Finance Association, HX–494 at 34, where consumer defences may be less likely. Nontheless, 22 consumer law specialists estimated that payment of disputed debts occurred in 23 percent of cases, based on their experiences in serving mainly low-income consumers. NCLC survey, *supra* note 54, HX–467 at 44–45.

[77] *See* discussion of Pennsylvania procedures for reopening *supra* notes 38–42 and accompanying text. Because the procedure for reopening depends essentially on depositions, *see Swarb v. Lennox*, 314 F. Supp. 1091, 1095 (E.D. Pa. 1970), *aff'd*, 405 U.S. 191 (1972), it would be extremely difficult for a judgment debtor to proceed effectively *pro se*. *See, e.g.*, Eugene Thirolf, Land of Lincoln Legal Assistance Foundation, Tr. 3372.

[78] *Swarb v. Lennox*, 314 F. Supp. 1091, 1095 (E.D. Pa. 1970), *aff'd*, 405 U.S. 191 (1972).

[79] *Id.* at 314 F. Supp. 1095; Bernard A. Podcasy, Legal Services of Northeastern Pennsylvania, Tr. 9829.

[80] *See* NCLC survey, *supra* note 54, HX–467 at 44 (72 percent median success rate in reopening cognovit judgments suggests invalid use of confessions by creditors); *see also* discussion of potential for abuse of cognovit provisions *supra* note 72.

[81] Pa. Ct. R. Civ. P. 236 (West 1983).

[82] *See, e.g., Nesbitt v. Blazer Financial Services*, 559 F. Supp. 819, 830 n.8 (N.D. Ill. 1982).

[83] Pa. Ct. R. Civ. P. 236 (West 1983).

[84] When a judgment is executed upon years after its entry, judgment debtors suffer significant practical problems in producing evidence of any defenses they may have. *See, e.g.*, Carol Knutson, Neighborhood Legal Services Association, Pittsburgh, Tr. 11106; Herschel T. Elkins, Office of the Attorney General of California, Tr. 5290–91.

whose property has been improperly encumbered.

The record demonstrates that economic loss of several different sorts is experienced by debtors against whom confessions of judgment are entered. Injury occurs even when consumers ultimately succeed in overturning a confessed judgment.[85] Accordingly, we find that the use of cognovits causes substantial consumer injury.

E. Offsetting Benefits

Conflicting evidence appears in the rulemaking record with respect to the benefits derived from the use of cognovits. There is testimony indicating that confessions of judgment are considered a particularly useful collection device in Pennsylvania [86] and Illinois.[87] Other evidence suggests that some creditors do not consider them to be of great utility, however.[88]

Those who supported the importance of cognovit clauses suggested that the abolition of confessions of judgment might decrease credit supply or increase credit cost.[89] One commenter suggested that large finance companies and commercial banks might require security for loans more frequently than they currently do if cognovits were abolished.[90]

In contrast, the National Commission on Consumer Finance found that where states had prohibited or restricted confessions of judgment, there had been, in fact, no significant effect on the cost or avilability of consumer credit.[91] Other commenters agreed with this finding with respect to the extension of credit in their states.[92]

The principal reason that the abolition of cognovits might increase the cost of credit is that creditors would be required to file suit against defaulting debtors rather than merely filing a confession and obtaining judgment. Suit was described as a more time-consuming and costly procedure by one commenter from Illinois.[93] Another stated, however, that although instituting suit might impose a thirty or forty day delay in carrying out collection activities, the abolition of confessions of judgment would have no practical significance for creditors.[94]

In fact, it appears that as many as 91 percent of debtors fail to appear to defend when creditors institute suit against them.[95] To the extent that debtors do not answer and defend, creditors do not incur the legal expenses of preparing for and litigating their claims. Thus, although creditors may experience a slight delay in collection activities, it is unlikely that any significant additional costs will be incurred in the vast majority of cases.

Other testimony suggested that creditors might respond to the abolition of confessions by increasing the use of other more costly remedies that remain available,[96] so that additional costs would transfer to the debtor. On the other hand, commenters note that the use of cognovits imposes additional costs upon debtors who seek to reopen judgments against them,[97] and may force debtors in marginal financial circumstances into bankruptcy.[98] Thus, the costs associated with the prohibition of cognovits appear to balance the costs inherent in their use.

Without cognovits, creditors will be required to litigate their claims against those consumers who choose to appear and defend. In these cases creditors may ultimately incur greater expense than they would have through the simple entry of judgment. Presumably, at least some of these same consumers would have petitioned for reopening of the judgment, however. In such cases, the creditor would have incurred the expense of litigation in any event. Thus, except to the extent that debtors who would not otherwise have done so are encouraged to contest creditors' claims when served with a complaint as opposed to notice of judgment, this provision of the rule will have little economic impact on creditors.[99]

Viewed as a whole, the record demonstrates that confessions of judgment do not produce significant benefits to creditors or, by extension, to consumers. Because the injury associated with their use can be substantial, the Commission finds that any benefits produced by their continued use do not outweight the injury that they cause to consumers.

F. Alternatives Considered and Modifications Adopted

This rule provision is intended merely to ensure that, before any deprivation of property occurs, debtors will be afforded the basic due process rights of notice and an opportunity to be heard. The proposed rule addressing confessions of judgment orignally prohibited the taking or receiving from a consumer an obligation constituting, *inter alia*, a "power of attorney." In response to the concerns expressed by many commenters, the phrase "warrant of attorney" has been substituted instead in the final version of the rule. This revision is designed to ensure that real estate first mortgages and deeds of trust are not affected by this rule

[85] In the NCLC survey legal aid attorneys estimate that the likelihood of success in reopening a confessed judgment is 72 percent. *See* discussion *supra* note 80. A Pennsylvania legal aid attorney estimates that she succeeded in reopening close to 50 of 100 confessed judgments in three years. Carol Knutson, Neighborhood Legal Services Association, Pittsburgh, Tr. 11122.

[86] Burton Caine, Professor of Law, Temple University, on behalf of the Pennsylvania Consumer Finance Association, Tr. 8423.

[87] Clarence Naborowski, Illinois Consumer Finance Association, Tr. 3845–46.

[88] The NCCF survey shows that only 17 percent of large banks and finance companies rate cognovits as among the two most essential provisions in unsecured loan contracts. *See supra* note 63 and accompanying text.

[89] *See, e.g.*, Herschel C. Adcock, Louisiana Consumer Finance Association, Tr. 1211–13; rebuttal submission of the National Consumer Finance Association, R–XIII–31 at 50; Richard Peterson, Credit Research Center, Purdue University, Tr. 9466; Robert P. Shay, National Consumer Finance Association, HX–494 at 34, Tr. 12054; Clarence Naborowski, Illinois Consumer Finance Association, Tr. 3846; Richard K. Slater, Consumer Bankers Association, Tr. 11630.

[90] Robert P. Shay, National Consumer Finance Association, HX–494 at 34.

[91] This conclusion was based on a cross-state econometric model of survey data obtained from four different types of lending institutions. *See Consumer Credit in the United States*, Report of the NCCF, 20 (1972), R–XI–11(g). Richard Peterson, Credit Research Center, Purdue University, Tr. 9468, criticizes the NCCF survey results. For a critical analysis of Mr. Peterson's methodology, *see* Staff Report at 110, n.70.

[92] *E.g.*, James G. Boyle, Texas Consumer Association, Tr. 21–22; Thomas Tahnk, Minnesota Office of Consumer Services, Tr. 2902–03; Patrick Ryan, Oklahoma Department of Consumer Affairs, Tr. 764–65; James Davis, Indiana Department of Financial Institutions, Tr. 4764.

[93] Clarence Naborowski, Illinois Consumer Finance Association, Tr. 3846.

[94] Michael Brown, United Auto Dealers Association, Chicago, Tr. 3846.

[95] David Caplovitz, *Consumers in Trouble: A Study of Debtors in Default* 222 (1974). *See also* Clarence Naborowski, Illinois Consumer Finance Association, Tr. 3845; James H. Hiatt, Legal Aid Society of Oklahoma County, R–I(c)–14 at 2.

As discussed more fully *supra* at notes 6–14, it is the opportunity to exercise due process rights before deprivation of property occurs that is constitutionally mandated. Whether to exercise this opportunity is a matter of individual choice, in which many factors—including lack of a defense—may be involved.

[96] For example, it was suggested that if cognovits were abolished, lenders might make more frequent use of mortgages to secure consumer loans. Costs of preparing and filing mortgages are said to be higher than costs of preparing and filing confessions of judgment. *See, e.g.*, Ernest T. Salzer, Bank of Pennsylvania, Reading, Post-Record Comments XV–51 at 1–2; C.R. Gearhart, Pittsburgh National Bank, Post-Record Comments XV–238 at 2.

[97] Richard Alpert, National Consumer Law Center, R–I(d)–85 at 15; Carol Knutson, Neighborhood Legal Services Association, Pittsburgh, Tr. 11103; *see also* Eugene Thirolf, Land of Lincoln Legal Assistance Foundation, Tr. 3371–72.

[98] W.C. Evans, Texas Finance Association, Tr. 974. *But see* Robert P. Shay, National Consumer Finance Association, HX–494 at 35.

[99] The NCLC survey of legal aid attorneys, *supra* note 54, HX–467 at 44–45, suggests that the use of cognovits results in the payment of disputed debts in 23 percent of their cases. The record provides no basis for estimating what percentage of these debtors would defend against a complaint where they would not have sought to reopen a judgment.

provision. Such agreements typically contain powers of attorney for purposes of foreclosure, subject to various state restrictions governing, for example, mortgagors' rights to cure, equitable rights of redemption, and permissible notice and sale procedures. This rule provision is intended to bar the use of confessions of judgment in real estate-secured second motgage loan obligations, however, to the extent that the proceeds of such secured loans are used for consumer purchases.[100]

Similarly, powers of attorney given to expedite the transfer of pledged securities of the disposal of repossessed chattels are not within the scope of this provision. For example, an automobile installment sale contract may include a power of attorney authorizing transfer of title in the event of repossession and sale of the vehicle. A power of attorney for this purpose would not constitute a "waiver of the right to notice and the opportunity to be heard in the event of suit or process" as contemplated by § 444.2(a)(1). This applies as well to a power of attorney to transfer ownership of pledged stocks, bonds, or similar instruments.

A power of attorney in an insurance premium finance contract enables prompt cancellation of an underlying third-party insurance agreement in the event of default.[101] Such provisions likewise do not fall within the ambit of the rule because they do not entail loss of notice and hearing rights "in the event of suit or process." Comparable powers of attorney in two-party insurance agreements will be unaffected as well.[102]

This section of the rule was also revised, in response to testimony and written comments, so as not to apply to the Louisiana Via Executiva process. The state of Louisiana prohibits confessions of judgment except for purposes of executory process.[103] This civil law executory procedure enables a creditor, when making a loan, to take a mortgage on property that is specifically identified in the mortgage. The mortgage may contain a confession of judgment, which has the effect of creating a security interest in the specified property.[104] Thus, the Louisiana confession of judgment operates in rem; it is used only to execute upon property that the debtor has selected to serve as collateral. Unlike confessions of judgment in common law jurisdictions, it does not operate in personam and, therefore, it does not create a general lien on other property of the debtor.[105] In sum, the property that may be encumbered or sold under Louisiana's executory process appears to be consciously chosen with that possibility in mind by the debtor. To the extent that Louisiana executory process may involve the loss of any due process rights, the Commission lacks sufficient evidence to find that these rights are waived involuntarily or unknowingly.

Finally, confessions of judgment prohibited by this rule provision should be distinguished from the cognovit actionem, or confession acknowledging liability following institution of suit and service of process. Unlike the latter, which is executed in conjunction with negotiated settlements, the prohibited confessions of judgment involve anticipatory waivers of procedural due process protections in the context of credit obligations.[106]

V. Wage Assignments

Section 444.2(a)(3) of the rule provides that it is an unfair act or practice for a lender or retail installment seller to take or receive from a consumer an obligation that constitutes or contains a clause that makes and assignment of wages unless the assignment by its terms is revocable at the will of the debtor, constitutes a payroll deduction or preauthorized payment plan, or is an assignment of wages already earned.

A. Nature of the Practice

A wage assignment is a contractual transfer by a debtor to a creditor of the right to receive wages directly from the debtor's employer. To activate the assignment, the creditor simply submits it to the debtor's employer, who then pays all or a percentage of debtor's wages to the creditor.[1] The debtor releases the employer from any liability arising out of the employer's compliance with the wage assignment, and may waive any requirement that the creditor first establish or allege a default.[2] Absent a statutory restriction, it is not necessary to obtain the employer's consent to enter into a wage assignment.[3]

Wage assignment and wage garnishment are both methods by which a creditor can obtain the debtor's wages to apply to or satisfy a debt. Procedurally, however, the two remedies are very different. Garnishment requires that the creditor obtain a court judgment before wages can be garnished to collect the debt. The Supreme Court has held that prejudgment garnishment deprives the debtor of constitutional due process rights.[4] Wage assignment, on the other hand, does not require a judgment. A creditor can file a wage assignment without any judicial review of the creditor's claim. The debtor does not have a hearing with an opportunity to assert any defenses. Unlike prejudgment garnishment, prejudgment wage assignment has usually survived constitutional challenge.[5] There is no meaningful distinction between the effects of the two remedies,[6] but when

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[100] *See* rule definitions, § 444.1 (a), (b), and (d).

[101] J. Robert Sweat, Florida Premium Finance Association, Tr. 9753; *see also* Robert C. Duke, Texas Consumer Finance Association, Tr. 1813–14.

[102] *See Jeffrey Yates, National Association of Insurance Agents, R–I(a)–581.*

[103] La. Rev. Stat. Ann. § 9:3590 (West 1983).

[104] Herschel C. Adcock, Louisiana Consumer Finance Association, Tr. 1215–16, 1224.

[105] *Id.* at Tr. 1215.

[106] Numerous comments on the record urged that confessions of judgment obtained in the settlement or disposition of a pending action should not be prohibited, as they are entered into after the debtor has had notice and an opportunity to be heard. *See, e.g.*, George H. Brausch, American Bar Association Committee on Consumer Credit, R–I(d)–78; F.T. Weimer, Sears, Roebuck and Co., R–I(a)–427. Due process implications of the cognovit actionem are discussed more fully *supra* at notes 22–23 and accompanying text.

[1] Presiding Officer's Report at 115. For an example of a typical wage assignment, *see* Gwyneth D. Gillingham, Legal Aid Society of Kent County, R–I(c)–69 at Exh. B.

[2] Some state statutes prohibit the creditor from filing a wage assignment with an employer unless there is a payment in default. *See e.g.*, Ill. Ann. Stat. ch. 40, section 39.2 (Smith-Hurd 1976).

[3] 8 Am. Jur. 2d Assignments section 45 (1963).

[4] *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337 (1969). The Wisconsin garnishment statute at issue in *Sniadach* required that the debtor receive a summons and complaint within 10 days after service of garnishment on the employer. Wages were frozen, however, during those 10 days. 395 U.S. at 339–53. The court found that:

> [The wages] may, it is true, be unfrozen if the trial of the main suit is ever had and the wage earner wins on the merits. But in the interim the wage earner is deprived of his enjoyment of earned wage without any opportunity to be heard and to tender any defence he may have, whether it be fraud or otherwise.

395 U.S. at 339.

It is the seizure of wages before notice and hearing that violates due process. Justice Harlan wrote in his concurrence in *Sniadach* that "due process is afforded only by the kinds of 'notice' and 'hearing' which are aimed at establishing the validity, of at least the probable validity, or the underlying claim against the alleged debtor *before* he can be deprived of his property or its unrestricted use." 395 U.S. at 343 (Harlan, J. concurring) (emphasis in original).

Additionally, the court considered the nature of the seized property and, in a passage that applies with equal force to wage assignments, wrote:

> We deal here with wages—a specialized type of property presenting distinct problems in our economic system * * *. A prejudgment garnishment . . . is a taking which may impose tremendous hardship on wage earners with families to support.

395 U.S. at 340.

[5] *But see, e.g.*, *Factor's Application*, 23 Pa. D. 553 (1914), *aff'd*, 69 Pa. Super. 8 (1915) (Pennsylvania wage assignment statute held to violate state constitution).

[6] The Presiding Officer referred to wage assignment as the "contractual equivalent of garnishment * * *." Presiding Officer's Report at 124.

presented with challenges to wage assignments, courts generally have not found sufficient state action[7] in the assignment to trigger the due process protections of the fourteenth amendment; thus courts have not reached the merits of challenges based on constitutional claims.[8]

Some wage assignments are used as a method of making regular payments on a debt prior to delinquency rather than as a collection remedy.[9] These wage assignments are essentially voluntary payroll deductions, and are used most frequently by credit unions and other creditors closely associated with the employer.[10] This record does not indicate that payroll deduction wage assignments cause consumer injury;[11] we have therefore exempted such assignments from the rule. Similarly, preauthorized electronic fund transfers to accounts from wages may be considered to be wage assignments,[12] but they are used as methods of payment rather than as a collection remedy.[13] Thus, they are exempted from the rule because this rulemaking record does not show that they cause consumer injury.[14]

B. State Law

Wage assignments are prohibited in the Uniform Consumer Credit Code States,[15] several other states,[16] and in the District of Columbia.[17] A substantial majority of the remaining states have imposed restrictions on the use of wage assignments. Some of the more common restrictions are: a time limit for the assignment,[18] a requirement that the employer[19] or spouse[20] consent to the assignment, and an absolute prohibition of assignment in certain kinds of transactions.[21] In addition, some states require that the wage assignment be on a separate document,[22] and some allow the debtor to contest a wage assignment by informing the employer that he or she has a defense.[23]

Some states have enacted a limitation (generally 15 percent to 25 percent) on the amount of weekly or monthly wages that may be assigned.[24] State provisions are inconsistent, however, and do not always offer adequate protection.[25]

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[7] The due process clause of the fourteenth amendment applies only to state action, not to private conduct. U.S. Const. amend. XIV, section 1 ("nor shall any *State* deprive any person of life, liberty, or property, without due process of law * * *") (emphasis added).

[8] *See e.g., Bond v. Dentzer*, 494 F.2d 302 (2d Cir.), *cert. denied*, 419 U.S. 837 (1974); *Donahoo v. Household Finance Corp.*, 472 F. Supp. 353 (E.D. Mich. 1979).

[9] Presiding Officer's Report at 121–22.

[10] For examples of payroll deduction payment plans, *see, e.g.*, Merle Jewell, Boeing Employees' Credit Union, Tr. 10905–12; Tilman R. Thomas, Jr., Government Employees Credit Union, Tr. 838–40; David White, National Association of Federal Credit Unions, HX–459 at 5; Burton Caine, Pennsylvania Consumer Finance Association, Tr. 8429.

[11] Presiding Officer's Report at 129, 131. *See also* discussion *infra*, Sections D and F.

[12] Presiding Officer's Report at 129, *citing* William T. Gwennap, American Bankers Association, HX–500 at 5.

[13] Electronic transfers are governed by the Electronic Fund Transfers Act, 15 U.S.C. Part 1693 *et seq.* (1982) and the implementing regulations at 12 CFR Part 205 (1983). A preauthorized transfer may be revoked by the consumer with a three-day notice. 15 U.S.C. 1693e (1982); 12 CFR Part 205.10(c) (1983).

[14] *See* discussion of consumer injury *infra* Section D.

[15] Colo. Rev. Stat. Ann. sections 5–2–410, 5–3–403 (1973); Idaho Code section 28–43–304 (Supp. 1983); Ind. Code Ann. sections 24–4.5–2–410, 24–4.5–3–403 (Burns 1982); Iowa Code Ann. section 537.3305 (West Supp. 1983–84); Kan. Stat. Ann. section 16a–3–305 (1981); Me. Rev. Stat. Ann. tit. 9A, section 3–305 (1980); Okla. Stat. Ann. tit. 14A, sections 2–410, 3–403 (1983); Utah Code Ann. sections 70B–2–410, 70B–3–403 (1980); Wyo. Stat. Ann. sections 40–14–244, 40–14–334 (1977).

All of the U.C.C.C. states except Colorado permit an employee to authorize deductions from his or her wages as long as the authorization is revocable. Idaho and Iowa also require that the debtor receive a complete copy of the document evidencing the authorization, and that the document contain a conspicuous notice of the right to revoke.

In addition, South Carolina and Wisconsin have enacted consumer protection codes that are substantially similar to the U.C.C.C., and incorporate the U.C.C.C. wage assignment prohibition. *See* S.C. Code Ann. sections 37–2–410, 37–3–403 (Law. Coop. 1976), Wis. Stat. Ann. section 422.404 (West 1974).

[16] Ala. Code section 8–5–21(a) (1975) (assignment of future wages void); Conn. Gen. Stat. Ann. section 52–361(g) (Supp. 1983–84); Ohio Rev. Code Ann. section 1321.32 (Page 1979), (assignment valid only if for child support), section 4113.16 (Page 1980).

In Pennsylvania, a statute regulating the assignment of future wages was held to be unconstitutional in *Foster's Application*, 23 Pa. D. 558 (1914), *aff'd*, 60 Pa. Super. 8 (1915).

[17] D.C. Code Ann. section 28–2305(a) (1981).

[18] *See e.g.*, Ariz. Rev. Stat. Ann. section 6–631 (Supp. 1982) (four years); Ill. Ann. Stat. ch. 48, sections 39.3, 39.5 (Smith-Hurd 1976) (two years as to future employers; three years otherwise); Ky. Rev. Stat. Ann. section 371.140 (Bobbs-Merrill 1971) (ninety days, small loans); Md. Com. Law Code Ann. section 15–302 (1975) (six months); Mass. Gen. Laws Ann. ch. 154, section 2 (West Supp. 1983–84) (one year, small loans); Mass. Gen. Laws Ann. ch. 154, section 3 (1971) (two years, loans above $3,000); Minn. Stat. Ann. section 181.06 (West Supp. 1983) (sixty days unless salary is over $1,500 per month, then 5 years); R.I. Gen. laws section 28–15–2 (1979) (one year); W. Va. Code section 21–5–3 (1981) (one year).

[19] *See e.g.*, Ark. Stat. Ann. section 81–316 (1976); Del. Code Ann. tit. 5 section 2115 (1974); La. Rev. Stat. Ann. section 23.731 (West Supp. 1983); Mass. Gen. Laws Ann. ch. 154, section 2 (West Supp. 1983–84); Minn. Stat. Ann. section 181.05 (West 1971); Miss. Code Ann. section 71–1–45 (1972); N.C. Gen. Stat. section 95–31 (1981); Tenn. Code Ann. section 50–2–105(a) (1983); W. Va. Code section 21–5–3 (1981).

[20] *See e.g.*, Ariz. Rev. Stat. Ann. section 6–631 (Supp. 1982); Ark. Stat. Ann. section 81–317 (1976); Cal. Lab. Code section 300 (Deering Supp. 1983); Hawaii Rev. Stat. section 409–20 (1976); Md. Com. Law Code Ann. section 12–311 (Supp. 1981); Mass. Gen. Laws Ann. ch. 154, section 2 (West Supp. 1983–84); Minn. Stat. Ann. section 181.07 (West Supp. 1983); Neb. Rev. Stat. section 45–144 (1978); R.I. Gen. Laws section 19–25–33 (1969); Vt. Stat. Ann. tit. 8, section 2228 (1970); Va. Code Ann. section 6.1–289 (1983).

[21] *E.g.*, wage assignments prohibited in small loans: Fla. Stat. Ann. section 516.17 (West Supp. 1983); Md. Com. Law Code Ann. section 12–311(a)(2) (1983); Mich. Comp. Laws Ann. section 493.17 (West Supp. 1983–84); Nev. Rev. Stat. section 675.340 (1979); N.J. Stat. Ann. section 17:10–17 (West Supp. 1983–84); N.C. Gen. Stat. section 53–160(b) (1982); N.D. Cent. Code section 13–03–17 (1981); Or. Rev. Stat. section 725.355 (1981); Tex. Rev. Civ. Stat. Ann. art. 5069–3.20(i), 5069–4.04(1) (Vernon 1971). Wage assignments prohibited in retail installment contracts: Hawaii Rev. Stat. section 476–13 (1976); Md. Com. Law Code Ann. section 12–607(7) (1983); Mass. Gen. Laws Ann. ch. 255D, section 10(8) (West Supp. 1983–84); Mich. Comp. Laws Ann. section 445.864(1)(b) (West Supp. 1983–84); Minn. Stat. Ann. section 325G.16(2)(c) (West 1981); N.J. Stat. Ann. section 17:16C–39 (West Supp. 1983–84); N.M. Stat. Ann. section 56–1–5.B (1978); N.D. Cent. Code section 51–13–02.1(2) (1982); Or. Rev. Stat. section 83.150(2) (1981); Tex. Rev. Civ. Stat. Ann. art. 5069–6.05(2) (Vernon 1971); Vt. Stat. Ann. tit. 9, section 2453 (1970). Wage assignments prohibited in home repair loans: Me. Rev. Stat. Ann. tit. 9, section 3724(6) (1980); N.J. Stat. Ann. section 17:16C–64 (West 1970). Wage assignments prohibited in motor vehicle sales: Mass. Gen. Laws Ann. ch. 255B, section 20(1) (West Supp. 1983–84); N.H. Rev. Stat. Ann. section 361–A:7 VIII(1) (1966); Or. Rev. Stat. section 83.070(1) (1981); Tex. Rev. Civ. Stat. Ann. art. 5069–7.07(2) (Vernon 1971); N.Y. Pers. Prop. Law section 302(13)(b) (McKinney 1976).

[22] *See, e.g.*, Cal. Lab. Code section 300(b)(1) (Deering Supp. 1983); Ill. Rev. Stat. ch. 48, section 39.1(5) (Smith-Hurd 1969); N.Y. Pers. Prop. Law section 46–C(a) (McKinney 1976).

[23] *See, e.g.*, Ill. Ann. Stat. ch. 48, section 39.4a (Smith-Hurd Supp. 1983–84); N.Y. Pers. Prop. Law sections 46–c–48 (McKinney 1976).

[24] *See, e.g.*, Ill. Ann. Stat. ch. 48, section 39.4 (Smith-Hurd Supp. 1983–84) (15 percent); Mass. Gen. Laws Ann. ch. 154, section 3 (1971) (25 percent); N.M. Stat. Ann. section 58–15–22.B (1978) (10 percent); N.Y. Pers. Prop Law section 48–a (McKinney 1976) (10% for loans less than $1,000); W. Va. Code section 46A–2–116 (1980) (25 percent). *See also* Neb. Rev. Stat. section 36–213 (1978) and Va. Code Ann. section 34–29(a) (Supp. 1983) (same limit as for wage garnishment).

[25] Not all states limit the amount of pay that can be taken with a wage assignment. *e.g.*, Ark. Stat. Ann. sections 81–316, 81–317 (1976); Miss. Code Ann. section 71–1–74 (1972); Wash. Rev. Code sections 49.48.090, 49.48.100 (1982) (statutory provisions governing wage assignments do not include any limit on the amount that can be assigned). *See also* Commerce Clearing House Consumer Guide at ¶ 650.

Even in states with limits, creditors have sometimes taken more than the state limit and more than the 25 percent permitted under the federal Consumer Credit Protection Act, 15 U.S.C. 1671–1677 (1982). *See* Robert Atkinson, Legal Aid Service of Portland, Tr. 5930–31 (credit unions take entire paycheck when debtors' employment terminates); Daniel Hedges, Esq., Tr. 11361 (company stores take 70–80 percent of consumers' wages despite West

Continued

Federal statutory limitations on wage garnishment [26] do not apply to wage assignments.[27] Thus, unless there is a state statutory limitation, creditors are restricted only by the terms of the wage assignment.

C. Prevalence

The rulemaking record [28] shows that wage assignments are used primarily by small loan and finance companies, and most heavily in California, Illinois, Michigan,[29] and New York.[30] The National Consumer Finance Association (NCFA) reported that wage assignments were included in approximately 13 percent of the small loan contracts surveyed [31] and in approximately 6 percent of purchased sales finance contracts held by surveyed companies.[32] Some record evidence suggests, however, that the percentage of contracts with wage assignments may be significantly higher than the NCFA survey shows. For example, the Secretary of the New York State Consumer Finance Association testified that in 1975, wage assignments were included in 73.2 percent of loans made by licensed New York lenders.[33]

Wage assignments may be obtained from co-signers [34] and spouses [35] as well as from the principal debtor, and are commonly used with other forms of security.[36] In states that permit wage assignments, consumers cannot reasonably shop around for a contract of wage assignments are actually filed with employers.[37]

Wage assignments in the form of payroll deduction plans are used frequently by state [39] and federal [40] credit unions. As discussed below, payroll deductions are excepted from the wage assignment prohibition in the rule.

In sum, the use of and restrictions on wage assignments vary considerably from state to state. Overall, the record shows that wage assignments are used in a significant number of consumer transactions, and they are prevalent in states where they are permitted.

D. Consumer Injury

The preponderance of record evidence establishes that consumers suffer substantial injury when wage assignments are used as a collection device.[41] Wage assignment, unlike garnishment, occurs without the procedural safeguards of a hearing and an opportunity to assert defenses or counterclaims.[42] The use of wage assignments causes interference with employment relationships, pressure from threats to file wage assignments with employers, and disruption of family finances.[43] Wage assignments are particularly harmful because they cause injury to consumers who may have valid reasons for nonpayment.[44]

Virginia statute limiting wage assignments to 25 percent of the debtors' earnings). *See also Western v. Hodgson*, 494 F.2d 379, 380 (4th Cir. 1974) (because of a wage assignment, consumers received "no take-home wages for some pay periods and less than 75% of their wages for other pay periods"); Thomas D. Crandall, Esq., Tr. 10666 (former client lost 80 percent of his wages because of wage assignment); Presiding Officer's Report at 127.

[26] The Consumer Credit Protection Act, 15 U.S.C. 1671–1677 (1982) limits the amount of wages that can be garnished and prohibits an employer from discharging an employee if wages are garnished for any one indebtedness.

[27] *See, e.g., Western v. Hodgson*, 494 F.2d 379 (4th Cir. 1974) (wage assignments are exempt from the Consumer Credit Protection Act).

[28] The evidence of record includes the following surveys:

1. A 1977 National Consumer Finance Association (NCFA) survey of accounts from a sample of national finance companies, *see* HX–495, HX–493, HX–497.

A state-by-state breakdown of the survey results revealed significant numbers of wage assignments in four states. R–XIII–38:

	Small loans (percent)	Sales finance (percent)
California	32	
Illinois	83	58
Michigan	68	38
New York	68	53

California permits only the assignment of wages already earned, so that statistics for California are not comparable to figures for other states.

2. A 1972 National Commission on Consumer Finance (NCCF) survey, *see* NCCF Technical Studies, Vol. V at 64–66 (1972).

The NCCF reported results on a national basis without providing a state by state breakdown. In addition, in the personal loan area, firms were directed to answer "yes" to the relevant question only if they included wage assignments in "substantially all of your personal loans." *Id.* at 217.

The results of the NCCF survey were as follows:

Finance companies	13 percent (personal loans). 1–2 percent (indirect paper).
Banks	3–4 percent (depending on nature of the transaction and size of bank).
Retailers	3 percent (revolving credit). 1 percent (installment credit).

Id., at 64–68.

3. A 1977 Consumer Bankers Association (CBA) survey of member banks, *see* HX–490, HX–491.

Members of the CBA are, in general, larger banks that do a high volume of consumer lending business. Richard Slater, Consumer Bankers Association, Tr. 11635–36. The CBA requested responses only from banks in states that permit wage assignments, HX–491, question 14. The CBA survey found that 23 percent of banks responding indicate use of wage assignments in the majority of personal loan contracts, compared to 7 percent for both automobile direct loans and automobile indirect paper. HX–490, Table 8.

[29] Since the development of the rulemaking record, Michigan has statutorily prohibited small loan company wage assignments. Mich. Comp. Laws Ann. section 493.17 (West Supp. 1983–84). The statute became effective on March 31, 1981.

[30] The rulemaking record shows that wage assignments have also been used in, among other states, New Jersey, Florida, and Virginia. XI–153 at 35–49. The record also indicates that wage assignments are used, albeit to a lesser extent, by creditors other than small loan and finance companies. Eugene Thirolf, Land of Lincoln Legal Assistance Foundation, Tr. 3380 (retailers sometimes use wage assignments); Daniel Hedges, Appalachian Research and Defense Fund, Tr. 11303 (company stores use wage assignments).

[31] NCFA survey, *supra* note 28 at HX–490, HX–497.

[32] *Id.* at HX–495.

[33] Alfred Orlin, Tr. 11400, *citing* New York State Banking Department statistics.

[34] *See, e.g.*, finance company consumer files R–XI–LIB 340; R–XI–LIB 338; R–XI–LIB 309; R–XI–BEN 13; testimony of Robert Mallock, Beneficial Management Corp., Tr. 9602, and Michael Nelson, Legal Aid and Defender Association of Kent County, Tr. 4815.

[35] *See* finance company consumer files R–XI–CIT 215; R–XI–CIT 217; R–XI–BEN 102; R–XI–BEN 20; R–XI–BEN 20; R–XI–BEN 43; R–XI–BEN 100.

[36] The NCFA survey determined whether finance company loans were secured or unsecured. The questionnaire treated loans secured by only a wage assignment as unsecured. HX–494, Exh. 5 (questionnaire). Illinois finance companies reported only 131 unsecured loans, but 393 loans with wage assignments. Thus, even if we assume that all unsecured loans are subject to wage assignments, a substantial number of reported wage assignment loans were also secured by other property. The same was true in Michigan, where finance companies reported 111 unsecured loans and 263 wage assignment loans, and in New York, where finance companies reported 170 unsecured loans and 332 wage assignment loans. *See* R–XIII–33.

[37] *See, e.g.*, William S. Ballenger III, Director, Michigan State Department of Licensing and Regulation, Tr. 8177; Land of Lincoln Legal Assistance Foundation, Post-Record Comments XV–244 at 3; finance company's consumer file HFC 0216 (wage assignment in effect unless 'no' typed into form).

[38] The record contains various estimates of the frequency with which wage assignments are actually filed with employers. Robert P. Shay testified that, based on the NCFA survey, less than five percent of wage assignments taken by finance companies are actually filed. HX–494 at 37. Other estimates range from 21 percent (NCCF survey, *supra* note 28) to over 50 percent (National Consumer Law Center (NCLC) Survey of Credit Contract Practices (1977), HX–467).

[39] *See, e.g.*, Marie Jewell, Boeing Employees' Credit Union, Tr. 10903–12.

[40] *See, e.g.*, David White, National Association of Federal Credit Unions, HX–459 at 5–7.

[41] This record does not indicate that payroll deduction wage assignments result in consumer injury. They are therefore excluded from the prohibition in the rule. *See* discussion *infra* at Section F.

[42] The Supreme Court has held that prejudgment wage garnishment violates due process rights. *See* discussion of *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969), *supra* note 4. Prejudgment wage assignment, however, is not unconstitutional in most jurisdictions, but this result is largely because courts do not find sufficient state action to trigger due process protections. *See* discussion *supra* at Section A.

[43] *See infra* text accompanying notes 50–53 and 59–64.

Additionally and importantly, the record shows that debtors are not aware of the rights provided to them by state law.[45] In Illinois, for example, upon default the creditor must inform the debtor of the right to notify the employer and the creditor of any defense.[46] The debtor can then contest the wage assignment by serving a notarized "notice of defense" to the creditor by registered or certified mail.[47] Although designed to be protective, the statutory scheme does not accomplish its purpose because debtors do not understand the procedural notice of defense requirements and, more importantly, do not understand what a defense is and therefore do not know if they have one.[48] As a consequence, despite the existence of state statutes, many wage assignments result in collection by creditors even when there have been a breach of warranty, fraud, or other violation of law that may constitute a defense to payment.[49]

The rulemaking record establishes that wage assignments cause serious and detrimental interference with employment relationships. Employers are hostile to wage assignments, and loss of employment for the debtor is possible.[50] Promotions, pay raises, job assignments, and other employment factors may be adversely affected. Employers resent the added administrative expense of wage assignments,[51] fear that the employee's job motivation will be affected, and view the failure to repay debts as a sign of irresponsibility.[52] The Consumer Credit Protection Act [53] prohibits an employer from dismissing an employee whose wages are garnished for any one indebtedness, but the Act does not apply to wage assignments.

During the proceeding, some creditors argued that state laws adequately protect against consumer injury and make the wage assignment prohibition unnecessary.[54] For example, New York and Illinois prohibit employers from dismissing or suspending employees because of wage assignments.[55] Although there is evidence that these statutes reduce job loss to some extent,[56] the protection offered by state law is limited and the record shows that a number of factors reduce the effectiveness of state protections. For example, in New York reinstatement is discretionary with the court;[57] in Illinois no statutory damages are provided.[58]

Wage assignments also cause serious consumer injury when used as a threat to obtain payment.[59] The pressure from these threats may cause consumers to abandon legitimate defenses to prevent the creditors from contacting the employers.[60] Consumers fear that the wage assignment will result in job loss,[61] and the record indicates that creditors exploit that fear [62] despite the fact that job loss would be economically counterproductive to the creditor. State wage assignment statutes do not offer protection from this type of injury. Most threats are made before the wage assignment is filed, but state statutes usually govern only procedural and post-filing rights.

Wage assignments also cause disruption of the family's finances and make it difficult for the debtor to purchase necessities.[63] This disruption can result in costly refinancing or the impossibility of discharging other obligations in a timely fashion.[64]

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[44] The Presiding Officer found that "wage assignment is the contractual equivalent of garnishment except that it permits the seizure of wages without the opportunity for a hearing or an impartial determination of whether or not, under the circumstances, the creditor is entitled to receive payment of those wages." Presiding Officer's Report at 124, *citing* James H. Hiatt, Legal Aid Society, Oklahoma County, R-I(c)-14 at 2. *See also* George J. Wallace, University of Iowa Law School, HX-492 at 20; Jerrold Oppenheim, Legal Assistance Foundation of Chicago, HX-79 at 14-15.

Garnishment may also cause interference with employment relationships, pressure from threats to file the garnishment, and a disruption of family finances. The key distinction is that the potential injury for garnishment results only after the creditor has obtained a judgment and the debtor has had the opportunity to assert defenses and counterclaims. What renders wage assignments unfair is that, without a hearing, they may cause injury even to those who legitimately owe nothing to the creditor.

[45] *See* Presiding Officer's Report at 128; Eugene Thirolf, Land of Lincoln Legal Assistance Foundation, Tr. 3356-57; Jerrold Oppenheim, Legal Assistance Foundation of Chicago, Tr. 2143-45; Karl R. Flodstron, Family Counseling Service of Aurora, Tr. 4847; James Baker, Onondaga Neighborhood Legal Services, Tr. 10781.

[46] Ill. Ann. Stat. ch. 48, § 39.2b (Smith-Hurd 1976).

[47] Ill. Ann. Stat. ch. 48, § 39.4a (Smith-Hurd Supp. 1983-84).

[48] Jerrold Oppenheim, Legal Assistance Foundation of Chicago, Tr. 2143-44.

[49] *See, e.g.*, William Ballenger, Michigan Department of Licensing and Regulation, Tr. 8178; Legal Assistance Foundation of Chicago, Post-Record Comments XV-252 at 5-7; James Baker, Onondoga Legal Services, Tr. 10782-83.

In an early study of wage assignments in Chicago, the author concluded that over 40 percent of the 432 wage assignments investigated by the Legal Aid Bureau of Chicago were legally unenforceable. Fortas, *Wage Assignments in Chicago*, 42 Yale L.J. 526, 537 (1932).

[50] George Corsetti, Michigan Association for Consumer Protection, Tr. 10499-501; Jerrold Oppenheim, Legal Assistance Foundation of Chicago, Tr. 2146; Eugene Thirolf, Land of Lincoln Legal Assistance Foundation, R-II(d)-128. Other files also contain statements by employers that wage assignments will lead to job loss. *E.g.*, R-X1-AVCO-149 (Ledger entry for 10/20: "Tel [telephone] B/A [business address] spk to Mr. ———, they deducted about $80 to send today, he is getting tired of handling the wage will definately let them go it they have another wage."); R-XI-AVCO-562 Ledger entries 12/16 "WA sent," 12/23 "TBA [telephoned business address] S/W [spoke with] Pers. [personnel department?]—Mr. ——— customer will be warned has 30 days to clear up or be fired."); R-XI-HFC-216 (Ledger entry 1/7 "Job Pho Mr. ——— says must make arrangements to release W/A or O/C [our customer] to lose time & or job. Advise OK we release but if O/C late 1 time we to resent & never release."); and R-XI-HFC-234 (Ledger entry 4/15 "job pho . . . Claims if we used WA cust would be fired."). Other files also evidence job loss due to wage assignments. *See, e.g.*, R-XI-HFC-77 (several ledger card references to employer threats to fire as result of wage assignment. Another ledger notation states "[employer] won't pay filed wages on both [debtor and wife], he fired her job, won't honor wage."); R-XI-AVOC-160 (Ledger entry for 7/21/71 says that, according to neighbor who was also personnel manager for debtor's former employer, "She [debtor's wife] lost her job because of W/A's and garnishments."); and R-XI-CIT-203 (Ledger entries 9/1/71". . . said he will lose job if we don't lift wage."; 11/10/71 "T.H. [telephoned home] Spoke to wife she said he got laid off."; 11/11/71 "T.B. [telephoned business] Verified He laid off for 5 wks."). *See also* William Ballenger, Tr. 8178; Ray Andrus, Tr. 8783.

[51] *E.g.*, Jerrold Oppenheim, Legal Assistance Foundation of Chicago, Tr. 2146; George Corsetti, Michigan Association for Consumer Protection, Tr. 10501-02.

[52] Peachtree Bank, R-II(a)-89; James Hiatt, Legal Aid Society, Oklahoma County, R-I(c)-14 at 7. Thomas M. Dalton, Farmers & Merchants State Bank, R-II(g)-63.

[53] 15 U.S.C. 1674(a) (1982).

[54] *E.g.*, Rebuttal Submission of NCFA, R-XIII-31 at 60-61; Leonard M. Cohen, Independent Finance Association of Illinios, R-II(g)-147; Clarence Naborowski, Illinios Consumer Finance Association, Tr. 3846-47.

[55] N.Y. Civ. Prac. Law § 5252 (McKinney 1946); Ill. Ann. Stat. ch. 48, § 39.11, section 10 (Smith-Hurd Supp. 1983-84).

[56] *See* Clarence Naborowski, Illinios Consumer Finance Association, Tr. 3846-47; Alfred Orlin, New York State Consumer Finance Corporation, Tr. 11402-05.

[57] N.Y. Civ. Prac. Law section 5252(2) (1978).

[58] The Illinios statute provides that violation is a class A misdemeanor. Ill. Ann. Stat. ch. 49, section 39.11, § 10 (Smith-Hurd Supp. 1983-84.)

[59] The rulemaking record establishes that creditors threaten debtors with wage assignments. *See, e.g.*, R-XI-CIT-218, R-XI-CIT-216, R-XI-BEN-9, R-XI-HFC-216, R-XI-BEN-102, R-XI-BEN-115, R-XI-BEN-43, R-XI-CIT-236, R-XII-CIT-214, R-XII-CIT-208.

Respondents to the NCLC survey *supra*, note 39, estimated that when a wage assignment exists and a default is declared, the wage assignment is "used to threaten or harass" 65 percent of the time. HX-468, HX-469 (question K08).

[60] Presiding Officer's Report at 124; Eugene Thirolf, Land of Lincoln Legal Assistance Foundation, Tr. 3356-57.

[61] *Id.* Even if state statutory restrictions prohibiting dismissal due to wage assignments were completely efective when wage assignments are actually filed, the restrictions do not protect against consumer fear of job loss that could lead to payment in response to threats to invoke a wage assignment.

[62] *See, e.g.*, Robert J. Abrahams, Tr. 9819-20; Ray Andrus, Tr. 8783.

[63] Presiding Officer's Report at 115. *See also* Beverly Ortiz, Consumer Protection Division, Office of the Attorney General of New Mexico, R-I(d)-46; Jerrold Oppenheim, Legal Assistance Foundation of Chicago, HX-79 at 16; Andrew Eller, Consumer Affairs Department, United Auto Workers, R-I(d)-92 at 13; Michael Nelson, Legal Aid Society of Kent County (Michigan), Tr. 4815-16.

In the absence of procedural safeguards, the potential for severe, substantial disruption of employment, the pressure that results from threats to file wage assignments, and the disruption of family finances constitute significant consumer injury. State law is inconsistent and does not offer sufficient protection to prevent this consumer injury.

E. Offsetting Benefits

Commenters who opposed the wage assignment prohibition submitted that wage assignments are important for borrowers who are bad credit risks or who have no other type of security,[65] and that wage assignments keep collection costs down.[66] Other commenters, usually credit unions, maintained that payroll deduction wage assignments are used for the convenience of borrowers and that they reduce handling costs.[67] A few commenters emphasized that instead of a prohibition against wage assignments, the prohibition should be against employers who discharge employees because of wage assignments.[68]

The Presiding Officer discussed the importance of wage assignments to borrowers who are bad credit risks or whose paycheck is their only asset.[69] Creditors frequently consider wage assignments to be a form of security analogous to collateral.[70] In states that statutorily limit the amount of an unsecured loan that can be made by a creditor, a wage assignment may be sufficient security to avoid such limitations.[71] Thus, a wage assignment may allow consumers with no other collateral to obtain a secured loan. Record evidence indicates, however, that in a substantial number of loans secured by wage assignments, other security was also provided.[72] Furthermore, in almost every state, garnishment is available as an alternative method of collection.[73] Considering that garnishment includes procedural protections not required in wage assignments,[74] the benefit of wage assignments is considerably diminished.

Creditors favoring wage assignments argued that they save the cost of going to court.[75] That argument does not, however, justify irrevocable wage assignments. In an undisputed case, court costs will be moderate. Although costs are greater in a disputed case, the costs are justified because it is precisely when the debtor has a defense that a court hearing is most valuable. With a wage assignment that is revocable at the will of the debtor, the debtor can chose either to save court costs by allowing the assignment or to revoke the assignment and raise defenses. Even if the debtor does not prevail, he or she will still have the statutory garnishment protections that apply to collection of a judgment.[76]

Credit unions maintained that wage assignments benefit consumers because they are an important method of keeping transaction costs down.[77] If a wage assignment is essentially a payroll deduction payment plan, the benefits outweigh the costs because the potential for the type of injury that this rule seeks to prevent[78] is nonexistent.

The evidence, therefore, supports our finding that consumers and competition do not receive countervailing benefits sufficient to offset consumer injury caused by the use of wage assignments unless the wage assignment is revocable at the will of the debtor or is a payroll deduction plan. Commenters considered that the loss, or fear of loss, of job and the deprivation of procedural protections do not justify the limited usefulness of this remedy.[79]

Furthermore, existing patterns and practices make clear that banning wage assignments will have little impact on the business of creditors other than finance companies. Banks and retail trade associations submitted that the rule provision on wage assignments would have little impact on their businesses.[80]

There is evidence that a ban on wage assignments will have no effect on the aggregate volume of credit extended,[81] but that a ban may lead to an increase in the rejection rate of finance company applications.[82] A study of the cost effects of wage assignment restrictions found no statistically significant effects from the restrictions,[83] but there is some evidence predicting that a prohibition would affect consumers from whom a

[64] Respondents to the NCLC survey, *supra* note 38, estimated that the use of wage assignments results in delinquency on other debts 53 percent of the time, HX-463 (question K09H), and results in costly refinancing over one-third of the time, HX-468 (question K09N).

[65] *Consumer Credit in the United States*, Report of the NCCF (1972) at 31; Harry A. Burn, National Association of Consumer Credit Administrators, Tr. 8866; Anne K. Bingaman, New Mexico Consumer Finance Association, Tr. 2098; Don L. Pratt, Indiana Consumer Finance Association, Tr. 3092.

[66] *See* Presiding Officer's Report at 123, *citing* George H. Braasch, Committee of Consumer Credit, American Bar Association, R-I(d)-76 at 7; James A. White, Council of State Credit Institutes, HX-461 at 8; Arthur H. Northrup, Indiana Consumer Finance Association, Tr. 3138; Alfred E. Orlin, New York State Consumer Finance Association, Tr. 11401.

[67] Tilman R. Thomas, Jr., Government Employees Credit Union, Tr. 838-39; Calvin Phillips, Texas Credit Union League, Tr. 563-64; T. J. Ryan, Albuquerque Bell Federal Credit Union, R-II(d)-5; Steven Knigge, Black Hills Federal Credit Union, R-II(b)-93; Herman Nickerson, National Credit Union Administration, R-I(a)-467; Jonathan Kindley, Credit Union National Association, R-I(a)-378; William Waysman, Northrup Credit Union, R-II(d)-127; Austin Montgomery, National Credit Union Administration, R-I(c)-815; Joan Morton, California Credit Union League, Tr. 7177; David White, National Association of Federal Credit Unions, HX-459.

[68] *See, e.g.*, Hawaii Credit Union League, Post-Record Comments XV-272; National Consumer Finance Association, Post-Record Comments XV-343 at 132.

[69] Presiding Officer's Report at 123. *See also supra* note 65.

[70] *See, e.g.*, Alfred Orlin, New York State Consumer Finance Corporation, Tr. 11400-01; Betty Gregg, Credit Union National Association, Inc., Tr. 9862; Consumer file CIT 215 (ledger card with box labeled "security" filed in "LIFE A&H HHG 2WA", meaning that the loan is secured by life and accident and health insurance, household goods, and two wage assignments). *See also* Harold T. Welsh, Illinois Credit Union League, Tr. 4095-96.

[71] Presiding Officer's Report at 122 & n. 37 *citing* Merle Jewell, Boeing Employees' Credit Union, Tr. 10903-12 (discussing state statutory limitations on unsecured loans by credit unions). *See also* Harold T. Welsh, *id.* at 4098.

[72] *Supra* note 38.

[73] Virtually every state has statutory provisions governing garnishment. *See* CCH Consumer Credit Guide ¶080 for an overview of state garnishment statutes.

[74] Prejudgment garnishment is unconstitutional. *See supra* text accompanying notes 4-7.

[75] *E.g.*, Leonard Cohen, Independent Finance Association of Illinois, R-II(g)-147; Joseph Park, Michigan Consumer Finance Association, Tr. 3180; David Fredrickson, Airline Pilots Association Federal Credit Union, R-II(d)-3. Michael Brown, United Auto Dealer Association, Tr. 2703. *See also supra* note 68.

[76] See *supra* note 28. The statutory protections will also apply if the debtor allows a default judgment.

[77] *E.g.*, Betty Gregg, Credit Union National Association, HX-657; *But see* Eugene Thirolf, Land of Lincoln Legal Assistance Foundation, HX-123 and Tr. 3379 (discussing need to assure true voluntariness).

[78] With a payroll deduction, the employer is aware of the plan from the outset of the transaction. Thus, there is no likelihood that the wage assignment will disrupt employment, and threats to file a wage assignment would be meaningless.

[79] Presiding Officer's Report at 125, *citing* Deborah S. Osseran, Assistant Attorney General, Arizona, Tr. 1035; William S. Ballenger, III, Director, Michigan State Department of Licensing and Regulation, Tr. 8176; and Thomas Crandall, Associate Professor of Law, Gonzaga University School of Law, Tr. 10665.

[80] James Goldberg, American Retail Federation, Tr. 8115-16 (rule provision "will have absolutely no effect on the vast majority of retailers."); K. E. Buhrmaster, New York State Bankers Association, R-I(a)-260 at 2 ("The prohibition against wage assignments, while contrary to specific New York statutes, is not repugnant to banks since they generally do not use wage assignments."). An American Bankers Association spokesperson discussed peripheral issues concerning wage assignments but did not argue that they are important to banks as a collection device. William Gwennap, American Bankers Association, Tr. 12193-200.

[81] Aho, *et al.*, Federal Trade Commission Proposals for Credit Contract Regulations and the Availability of Consumer Credit, R-XI-10 at 83.

[82] NCCF Technical Studies, Vol. V., *supra* note 23 at 131-40. *But see* Aho, *id.* at 63-101 for a criticism of the survey from which this conclusion is taken.

wage assignment is required to secure a loan.[84] In addition to formal studies, there is evidence that state restrictions on wage assignments have been of limited importance. With minor exceptions,[85] the record does not show that finance companies or other creditors do business in a different way, or serve a different clientele, in states that do and do not permit wage assignments. Thus, prohibiting wage assignments will not significantly affect the credit market.

The Presiding Officer found that "so long as the remedy of garnishment is available, creditors could extend credit to the class of consumers from whom a wage assignment is ordinarily required without suffering an undue increase in costs." [86] In fact, there is evidence that wage assignments do not provide a significant savings in legal costs.[87] The record also shows cases where creditors had wage assignments but chose to sue and then garnish the debtor's wages.[88] The fact that creditors voluntarily elect to forego use of wage assignments even when they have them is a strong indication of limited utility.

The Presiding Officer concluded that prohibiting wage assignments "would be of economic benefit to low-income or poor consumers, since it would no longer be possible to use this device as a means for interjecting the creditor into the employer-employee relationship without court action." [89] The preponderance of evidence establishes that the marginal benefit of irrevocable wage assignments to creditors is limited, especially with the availability of garnishment as an alternative remedy, and that any effect of banning wage assignments on overall credit availability will be small.[90]

F. Alternatives Considered and Modifications Adopted

The initial proposed rule would have banned wage assignments entirely. Based on the record, we have made four modifications to the promulgated rule. First, the rule will not apply to wage assignments that by their terms are revocable at the will of the debtor. Second, the rule does not prohibit payroll deduction plans or similiar preauthorized payment plans commencing at the time of the transaction in which the consumer authorizes a series of deductions as a method of making each payment. Third, the rule will not apply to wages already earned at the time of the assignment. Fourth, a definition of the term "earnings" was taken from the Uniform Consumer Credit Code and added to the proposed rule to clarify its coverage.

The first change is designed to allow consumers to enter into noninjurious revocable wage assignments to minimize transaction costs.[91] To fit within this exception the wage assignment must be revocable by its terms; therefore the wage assignment itself must include language that establishes revocability.[92] The wage assignment also must be revocable at the will of the debtor. This will allow the debtor to stop the wage assignment before injury occurs.

The second change is designed to permit credit unions and other creditors to continue to use voluntary payroll deduction plans as a repayment device, and to clarify that the rule does not prohibit preauthorized electronic fund transfers.[93] The exception for payroll deduction plans is consistent with the intent of the rule and with the record evidence. The rule is intended to address collection remedies, but a payroll deduction plan is a method of making payments on an obligation.[94] Thus, consumer injury does not result from its use.[95] The record contains substantial support for an exception to the rule for payroll deductions.[96] Some commenters recommended that a definition of wage assignment be included in the rule to clarify that payroll deductions are not affected;[97] we accomplish the same result by the exception we promulgate.

The third change is intended to eliminate a problem in California where certain creditors must take assignments of earned wages or a security interest in personal property to qualify for higher loan interest rates. Small loan companies take assignments of earned wages to qualify as personal property brokers under the state law.[98]

Some legal aid agencies opposed this exemption on the grounds that: (1) Earned wages are part of a low income debtor's subsistence, and (2) debtors have no bargaining power over the terms of wage assignments.[99] We find

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[83] G. Bentson, "The Costs to Consumer Finance Companies of Extending Consumer Credit," NCFF Technical Studies, Vol. II, at 152–153. Bentson found some statistically weak evidence (not significant at the .05 level and not completely consistent) that, in response to restrictions on wage assignments, finance companies adjust their behavior in ways that result in higher losses but lower operating costs to produce a higher net profit. *Id.* at 138–39, 152. *But see* Robert P. Shay, R–XI–185A for a criticism of Bentson's work.

[84] *See supra* notes 69–72 and accompanying text.

[85] *See, e.g.*, Harvey Miller, Gateway loan Company, Tr. 2529.

[86] Presiding Officer's Report at 308.

[87] Data from the NCFA survey show that creditors use legal process with the same frequency whether or not there is a wage assignment. Of 1,217 accounts including wage assignments, 1.4 percent were collected through an attorney. (Wage assignments from California were excluded because they are not used as a collection device and therefore would not affect legal costs.) In comparison, only .85 percent of all accounts were collected through an attorney. Judgments were obtained in 1.1 percent of wage assignment accounts, but only .98 percent of all accounts. Figures from HX–495, HX–496, HX–497. *See also* NCFA Data Tape, 215–42–1–12 [2–2] (physical exhibit, Section: 7, Shelf 2).

[88] *See, e.g.*, consumer files R–XI–CIT–214, LIB–340, LIB–345, LIB–347, LIB–355, LIB–375, LIB–380, LIB–381, BEN–147, BEN–113, CTA–126, CTA–153, GFC–430.

[89] Presiding Officer's Report at 308.

[90] The marginal benefit of payroll deductions and wage assignments that are revocable at the will of the debtor is greater and outweighs the potential for injury, if any, arising from their use. Thus, these wage assignments are exempted from the rule.

[91] Many commenters supported an exception for revocable wage assignments. *E.g.*, National Consumer Law Center, Post-Record Comments XV–324 at 13–17 (but emphasizes that assignment must be "easily terminable"); James L. Brown, University of Wisconsin Center for Consumer Affairs, HX–153 at 4; Eugene Thirolf, Land of Lincoln Legal Assistance Foundation, Tr. 3379 (no opposition to revocable wage assignments if truly voluntary); Michael S. Milroy, Valley National Bank of Arizona and National Banking Association, Tr. 5458; Tom D. McEldowney, Idaho Department of Finance, Tr. 5058–59.

[92] Although we do not promulgate an express provision requiring specific language or notice of the right to revoke, hidden revocability disclosures or attempts to obfuscate revocability may themselves constitute unfair or deceptive practices under Section 5 of the Federal Trade Commission Act. *See, e.g.*, *In re All-State Industries, Inc.*, 75 F.T.C. 465, 469–94 (1969), *aff'd*, 423 F.2d 423, 425 (4th Cir.), *cert. denied*, 400 U.S. 828 (1970) (required credit disclosure must be made with "conspicuousness and clarity"); *New York Jewelry Co.*, 74 F.T.C. 1361, 1409, *aff'd, sub nom. Tashof v. FTC*, 437 F.2d 707 (D.C. Cir. 1970) (policy that lured consumers into "contractual obligations which in all likelihood they have little understanding of" found "manifestly unfair"); *Beneficial Corporation*, 96 F.T.C. 120 (1980) (consent order) (misleading disclosures in credit transaction); c.f., *Raymond Lee Organization*, 92 F.T.C. 489 (1980), *aff'd*, 679 F.2d 905 (D.C. Cir. 1980) (ambiguous contract disclosures and insufficient disclaimers); *Bantam Books, Inc., v. FTC*, 55 F.T.C. 779 (1958), *aff'd*, 275 F. 2d 680 (2d Cir.), *cert. denied*, 364 U.S. 819 (1960) (inadequate disclosure of book abridgment).

[93] Electronic fund transfers are governed by the Electronic Fund Transfers Act, 15 U.S.C. § 1693 *et seq.* (1982); preauthorized transfers are revocable by statute. 15 U.S.C. § 1693e (1982); 12 C.F.R. § 205.10(c) (1983).

[94] For a description of a credit union payroll deduction plan, *see* Merle B. Jewell, Boeing Employees Credit Union, Tr. 10909.

[95] *See supra* note 78 and discussion of consumer injury, *supra* Section D.

[96] *See supra* note 67. Some credit union policies require a wage assignment to be irrevocable if the assignment is to constitute security for a loan. Merle B. Jewell, Boeing Employees Credit Union, Tr. 10903; Post-Record Comment XV–101. *See also* Hawaii Credit Union League, Post-Record Comment XV–272. Both revocable and irrevocable payroll deductions are permitted under this rule.

[97] David White, National Association of Federal Credit Unions, HX–459 at 5–7; Endicott Employees Federal Credit Union, Post-Record Comment XV–82 at 1.

[98] The Constitution of California establishes an interest ceiling of 10 percent but excepts from that

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that the record demonstrates that consumer injury from assignment of earned wages is minimal, and outweighed by offsetting benefits to consumers or competition.

We have also added the U.C.C.C.'s definition of "earnings" to the initial proposed rule to clarify the types of income to which the provision applies. This responds to industry suggestions that such a definition will facilitate compliance and add certainty to the rule.[100]

The National Commission on Consumer Finance recommended a ban on wage assignments for credit transactions involving over $300. It advised allowing assignments for transactions of $300 or less, but only for otherwise unsecured loans, and only on the condition that the assignment not exceed the lesser of: (1) 25 percent of the debtor's disposable earnings for any workweek, or (2) the amount by which his or her disposable earnings for the workweek exceed 40 times the federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 in effect at the time.[101] The Commission considered this approach, but we rejected it because the record shows that the injury caused by the use of wage assignments bears no relation to the size of the loan.[102] Use of an irrevocable wage assignment in small as well as large loans could result in interference with employment, injurious pressure from threats to file the assignment, and disruption of family finances, all without a hearing and an opportunity to assert defenses.

VI. Security Interests in Household Goods

A. Introduction

In return for the credit they receive consumers are often required to give their creditors a security interest in the property they own at the time credit is extended or may obtain after the credit transaction is consummated. Although creditors have made secured loans since the beginning of recorded history, the use of non-possessory liens on personal property is a comparatively recent development. Non-possessory security interests were not recognized at common law.[1] Since the beginning of this century, however, loans secured by non-possessory liens on debtors' household goods and personal effects have become increasingly common.[2]

Specifically addressed by this rule provision is a lien on a consumer's household goods taken in connection with a loan. The security interest in household goods gives rise to a right to seize property from a consumer, with the potential of inflicting a substantial forfeiture on the consumer. The rule at Section a(4) prohibits the use of security interests in household goods, as defined, in non-purchase money transactions,[3] while permitting the pledge of certain possessions that creditors regard as valuable collateral.

B. State Law

Security interests are creatures of statute, inasmuch as non-possessory liens were not recognized at common law.[4] Prior to the adoption of the Uniform Commercial Code (U.C.C.), a variety of different "security interests" were created by a variety of different statutes.[5] The U.C.C. eliminated all distinctions between security devices that preexisted it, distinguishing only between purchase money security interests and other interests. It cumulated all remedies available to secured creditors and reduced to a minimum the procedural formalities necessary to create a security interest. Today, Article 9 of the U.C.C. is the predominant law governing use of security interests in consumer transactions.[6] Article 9 affords creditors with maximum flexibility as to the terms contained in security interests, including coverage, description of property, and circumstances under which seizure may take place. The description of property required is minimal.[7] Creditors can often retain a security interest in all of a debtor's "household goods" by simply checking a box on a standard form.[8]

Statutory limitations on a creditor's capacity to secure a consumer obligation fall into three categories. The first consists of statutes regulating installment sale transactions where seller and initial creditor are the same entity. Most states have enacted statutes restricting installment sellers to a lien on goods sold.[9] In a few states additional limitations have been imposed on direct lenders.[10] Thus, most

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ceiling every significant class of consumer lenders, including personal property brokers. Cal. Const. Article XX section 22. At the time the Constitution was adopted, personal property brokers were defined by statute as those engaged in the business of lending money and taking as security for such loans either a contract involving the forefeiture of rights in or to personal property, the use and possession of which is retained by other than the lender, or alien on, assignment of, or a power of attorney relative to wages, salary, earnings, income, or commissions. *Budget Finance Plan v. Gamson*, 34 Cal. 2d 95, 207 P.27 825 (1949). The present definition contained in section 22003 of the California Personal Property Brokers Law is the same as that contained in the law in effect when the constitution was adopted. George R. Richter, California Loan and Finance Association, Tr. 5850–67. It has been held that to secure the benefit of the constitutional waiver from the interest ceiling of 10 percent personal property brokers' loans must be secured in whole or in part by a security interest in personal property or bya wage assignment. *Id.* Therefore, an absolute prohibition of wage assignments would severely limit, if not totally end, loans by personal property borkers in California. To avoid this result, the rule was modified to permit assignment of wages already earned.

[99] *See* Southern New Mexico Legal Services, Inc., Post-Record Comments XV–146 at 2–3; Legal Aid Bureau, Inc., Post-Record Comments XV–242 at 5.

[100] *See* Legal Assistance Foundation of Chicago, Post-Record Comments XV–252 at 9; United Bank of Denver, Post-Record Comments XV–110 at 2; New Orleans Legal Assistance Corporation, Post-Record Comments XV–314 at 5.

[101] NCCF Report, *supra* note 65 at 31. the $300 maximum recommended by the National Commission on Consumer Finance was apparently taken from the Uniform Small Loan Act adopted in 1917 when the dollar was worth far more than it is today. *See* Professor Robert P. Shay, NCFA, HX–494 at 39–40.

[102] *E.g.*, Richard Alpert, National Consumer Law Center, R–II(d)–85 at 20; Richard Halliburton, Legal Aid of Greater Kansas City, R–II(c)–29.

[1] Robinson and Nugent, *Regulation of the Small Loan Business* (1935), 18–19, 21. The common law, for most of its history, did not sanction non-possessory security interests in personal property, invalidating all such interests. *Twinne's Case*, 76 Eng. Rep. 809 (Star Chamber 1601).

[2] Robinson and Nugent, *supra* note 1, at 37, 49.

[3] The Uniform Commercial Code defines the term "purchase money security interest" as follows:

A security interest is a purchase money security interest to the extent that it is

(a) Taken or retained by the seller of the collateral to secure all or part of its price; or

(b) Taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used. U.C.C. section 9–107 (1978).

We address the question of what happens to an existing purchase money security interest when the loan is refinanced or consolidated *infra* at note 97.

[4] *Twinne's Case*, 76 Eng. Rep. 809 (Star Chambers 1601).

[5] For a list of statutes superseded by the U.C.C., see U.C.C. Official Text xxxiii, *et seq.* (1967). *See also* 1 Gilmore, Security Interests in Personal Property (1965); Gilmore and Axelrod, *Chattel Security*, 57 Yale L. J. 517 (1947); Gilmore, *The Secured Transaction Article of the Commercial Code*, 16 Law Contemp. Probs. 31 (1951).

[6] The sole exception is Louisiana, a civil law jurisdiction. Louisiana debtors are required to execute a notarized mortgage of chattels which gives rise to a right to proceed in summary process in the event of a default. La. Civ. Code art. 2234. The debtor is held to confess his obligation in the notarial instrument and the creditor may foreclose his lien in accordance with a two step confession of judgment theory. La. Civ Code art. 263. Louisiana also permits installment sellers to retain a "privilege" in the goods which is analogous to a purchase money lien. La. Civ Code art 3183. There are no limitations on the amount of property a creditor may take as security, and blanket security interests are common in Louisiana.

[7] *E.g.*, Op. Ky. Att'y Gen. (April 12, 1983) that validated the use of the term "household goods."

[8] Allen Kamp, Northwest Legal Services, R–II(f)–125, Exh. A.

[9] Retail installment sales acts reflect "conditional sale" concepts. *E.g.*, Arizona Rev. Stat. title 44, ch. 10, art. 1544. The Uniform Consumer Credit Code (U.C.C.C.) at § 2–407 also limits installment sellers to a lien on the goods sold. The U.C.C.C. has been adopted in nine states (Colorado, Indiana, Iowa,

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statutory limitations do not address the problem of non-purchase money security interests in household goods in consumer loan transactions, despite a predisposition to limit purchase money creditors to a lien on the goods in credit sales.

C. Prevalence

Based on the rulemaking record, we find that the practice of securing consumer loans with a non purchase money security interest in household goods (HHG)[11] is widespread. Finance companies are the preeminent users, and HHG security interests are found in a majority of finance company loan contracts.[12] However, banks also avail themselves of such security [13] as do credit unions [14] and even, occasionally, savings and loan associations.[15] Although retail installment sales acts tend to restrict retailers to a purchase money lien on the goods sold,[16] the record also reveals that certain retailers rely on HHG security interests as additional collateral in credit sale transactions.[17]

An HHG security interest may be created by checking a box appearing in the text of a standard form agreement.[18] In such cases the description of covered property is cast only in general terms giving consumers little notice of the nature and extent of the collateral they are pledging to secure the loan.[19] Consumers may thus be unaware, in a given instance, of what is subject to a security interest.[20] Under current interpretations of Article Nine of the U.C.C., the simple inclusion of the term "household goods" is sufficient to encumber all of the personal property owned by the consumer.[21]

On the other hand, there is evidence on the record that many finance companies do list security by preparing an inventory of all of a consumer's household property,[22] sometimes by asking consumers to give a list of the covered items either orally or in writing when the loan papers are filled out.[23] In these cases, and certainly where the consumer gives the inventory, there should be little question either that a security interest has been given or as to the scope of its coverage.

The majority of HHG security interests are taken in connection with extensions of credit made under small loan acts where the amount financed is limited, with the limit generally being between 1200 and 1500 dollars,[24] but HHG security interests are frequently taken to secure smaller extensions of credit.[25] In this connection, HHG security is employed by finance companies which are licensed to lend no more than 300 dollars.[26]

The record reflects instances where cosigners as well as the primary debtor pledge all of their household goods when they guarantee the loan of another.[27]

State regulators and officials generally confirmed the widespread use of blanket HHG security interests [28] in consumer transactions, as did legal services attorneys who appeared in the hearings.[29] Thus, the record strongly supports our finding that the use of HHG security interests is frequent and widespread.

D. Consumer Injury

This record reflects the fact that household goods typically have little economic value in the resale market.

The value of security in the second hand market in most cases is much less than the consumer owes. It would be the exceptional loan where the furniture would be worth even one-half of the principal.[30]

Kansas, Maine, Wyoming, Oklahoma, Idaho, and Utah). The Wisconsin Consumer Act at section 522.417, does the same thing.

[10] *E.G.*, Wisconsin Consumer Act section 422.417 reads "With respect to a consumer loan, a lender may not take a security interest other than a purchase money security interest in: Clothing of the customer and his dependents and the following: Dining table and chairs, refrigerator, heating stove, cooking stove, radio, beds, and bedding, couching and chairs, cooking utensils and kitchenware." Connecticut prohibits non-purchase money security interests in most consumer transactions, and purchase money is defined to include only installment sales. 42 Conn. Gen. Stat. 189. Maine prohibits any security interests in property that would otherwise be exempt from execution. Me. Rev. State. Ann. tit. 14, section 4401, (—), as do Iowa, Iowa Code Ann. section 537.3301, and Virginia, Va. Code sections 34-26, 34-28) (1976).

[11] The term "HHG" is widely used by the consumer finance industry to describe a blanket lien on household goods. *See e.g.*, HX-129 at Exh. 3.

[12] HX-494 (Statement of Robert Shay on behalf of National Consumer Finance Association). Results of a survey of some 10,000 current consumer accounts revealed clauses authorizing HHG security interests in 76 percent of precomputed loan contracts and 70 percent of per diem loan contracts. HHG were actually taken as collateral in 62 perecent of precomputed loans and 66 percent of per diem loans. *Id.* at 43.

See also, e.g., Harvey Miller, Gateway Loan Co., Tr. 2537; Hyman Weiner, Atlantic Finance Co. Tr. 6483; Robert Gage, Legal Aid Society of Mecklenburg County, Tr. 1268-69, 1297; Olin S. Pugh, South Carolina Consumer Finance Association, Tr. 9271; Kenneth Davis, Kentucky Consumer Finance Association, Tr. 1546; Dial Finance Co. Manual, R-DF-5; George Richter, Colorado Loan and Finance Association, Tr. 5869.

[13] *E.g.*, Thomas Huston, Iowa Banking Department, Tr. 2291; Willis Moreman, Kentucky Bankers Association, R-II(f)-168; Vern Kicks, Farmers National Bank, R-II(f)-181; R.C. Smith, Georgia Bank and Trust Co., R-II(f)-178; John Bennett, Park National Bank of Kansas City, R-II(b)-138; James Brown, Center of Consumer Affairs, University of Wisconsin, Tr. 4081; HX-413.

[14] Betty Gregg, Credit Union National Association, Tr. 9690; T. J. Ryan, Albuquerque Bell Federal Credit Union, R-II(d)-5; Tilman Thomas, Gov. EES Credit Union, Tr. 812; Harold Welsh, Illinois Credit Union League, Tr. 4097.

[15] C.C. Small, Texas Savings and Loan League, Tr. 1909.

[16] *See* Note 9, *supra*.

[17] *E.g.*, Allison Steiner, Central Mississippi Legal Services, Tr. 1764; Barry Powell, Community Legal Services of Mississippi, R-II(f)-68; Richard Halliburton, Legal Aid and Defender Society of Kansas City, Tr. 119-20; James Brown, Center of Consumer Affairs, University of Wisconsin, Tr. 4079-80; Robert Atkinson, Legal Aid County Legal Aid Society, Tr. 3869.

[18] *E.g.*, R-AVCO-51; R-ASSOC-165; R-BEN-25; R-LIB-268; R-CIT-393; R-CTA-144; HFC contract attached as Exh. A to Alan Kamp, Northwest Neighborhood Legal Services Association, R-II(f)-125.

[19] *E.g.*, R-AVCO-58 where contract reads "if checked at left, consumer goods consisting of all household goods, furniture, appliances, bric a brac and personal property of every kind and description * * *"; R-HFC-216 where the contract reads "Unless 'no' appears under chattel mortgage above there is a chattel mortgage security agreement on household and consumer goods."; R-ASSOC-165, where contract reads "All of the furniture, appliance, fixtures and other household goods of every kind and nature now located in or about Debtor's residence * * *"; and R-BEN-25 where contract reads "The nature of security for this note is checked herein" and a small box adjacent to the word "furniture" is checked. *See also* Presiding Officer's Report at 160.

[20] Mary Gillespie, San Francisco Neighborhood Legal Assistance, Tr. 5592, David Tarpley, Legal Services of Nashville, Tr. 3765-66; Alan Kamp, Northwest Neighborhood Legal Services, R-II(f)-125. *See also* Presiding Officer's Report at 164-165.

[21] *E.g.*, *In Re Drane*, 202 F. Supp. 211 (D.C. Ky. 1982).

See also Op. Ky. Att'y Gen. (April 12, 1968), which validates the use of the term "household goods" with reference to U.C.C. 9-110 and Op. S.C. Att'y Gen. No. 3156 (August 2, 1971).

[22] *E.g.*, Creighton Lynch, Southwestern Investment Co., Tr. 1859-60; John R. Shuman, Florida Consumer Finance Association, Tr. 3555; National Consumer Finance Association, Post-Record Comments XV-343 at 77; *see also* Post-Record Comments XV-269, 283, 301 and 342 at 267.

[23] *E.g.*, George W. Prentiss, Citizens Budget Co., Tr. 4214; Joseph C. Park, Michigan Consumer Finance Association, Tr. 3181; John R. Shuman, Tr. 3555.

[24] The median extension of credit reflected in the NCFA survey for all of the consumer loans surveyed was $1,231.00 for precomputed loans and $1,469.00 for per diem loans. HX-494.

[25] *E.g.*, all of the debtors' household goods secure the loan in R-BEN-154 ($375.00 loan); R-GFC-328 ($332.00 loan); R-BEN-152 ($242.00 loan); R-LIB-269 ($168.00 loan); R-CIT-367 ($600.00 loan); R-GFC-146 ($240.00 loan); R-GFC-154 ($64.00 loan); R-AVCO-487 ($277.00 loan); R-LIB-33 ($236.00 loan) and R-GFC-59 ($212.00 loan).

[26] James White, Council of State Credit Institutes (trade association for lenders of amounts less than 300 dollars), Tr. 11152.

[27] *E.g.*, Hyman Weiner, Atlanta Finance Co., Tr. 6483; R-DIAL-156.

[28] *E.g.*, Mervyn Dymally, Lieutenant Governor of California, Tr. 6515; Thomas Huston, Superintendent of Banking, Iowa, HX-87 p. 48; Irvin Parker, Administrator, Department of Consumer Affairs, South Carolina, Tr. 9230; Senator Alan Susman, West Virginia, Tr. 4877-78.

[29] *E.g.*, Kathleen Keest, Black Hawk County Legal Aid, Tr. 4254; David Tarpley, Legal Services of Nashville, R-I(c)-95; Robert Atkinson, Legal Aid of

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We lend more than the furniture is worth.[31]

In this proceeding, a large majority of industry witnesses confirmed that household goods have little, if any, economic value to creditors.[32] Their value to creditors is psychological, as noted in the testimony of Helmut Schmidt, Vice Chairman of Transamerica Financial Corporation:

There are two very, very important values to the furniture. One is the replacement value, the other is psychological, that may enhance sentimental values in heirlooms being provided and the negative of price, the loss thereof if a repossession takes place, et cetera. I couldn't possibly say whether replacement value or pride is the more important.[33]

The record reflects the fact that creditors rarely engage in actual repossession of household goods.[34] When it does occur, the furniture and other items seized frequently have little or no economic value; [35] occasionally, the act of seizure appears to be undertaken for punitive or psychological deterrent effect.[36]

Although seizure of household goods is rare, when it occurs it can have severe economic consequences. It may occur in the context of divorce, where a wife finds herself financially devastated and deprived of her personal belongings,[37] or without baby furniture,[38] or a refrigerator.[39] Repossessed furniture may be taken to the dump [40] or auctioned for a tiny fraction of its replacement value.[41] For the debtor, the replacement value is a true measure of the cost of the repossession.[42] Thus seizure often imposes a cost on the consumer which is seriously disproportionate to any benefit the creditor obtains.

In the context of seizure the disproportionate economic impact of non-purchase money security interests is most apparent. Debtors lose property which is of great value to them and little value to the creditor.[43] The value to debtors consists primarily of the replacement cost of the goods seized, together with psychological and emotional value. The debtor is, in an economic sense, willing to pay more for the household goods than they are ever worth to the creditor on the resale market. Although creditors are entitled to payment, such security interests offer little economic return to creditors at great cost to the debtor.

When consumers run into difficulty, the non-purchase money security interest in household goods also enables a creditor to threaten the loss of all personal property located in the home. This psychological lever, referred to over and over again in this proceeding,[44] together with the cost to the consumer of replacing the security, gives this remedy its value to the creditor.

The preponderance of evidence on the record supports our finding that despite the limited economic value of household goods, creditors rely on the psychological lever to seek payment and to persuade consumers to take other actions the creditors may deem appropriate, such as refinancing or obtaining a cosigner.

If in your discussion with the applicant you find that certain articles have a sentimental value because of the fact that they are family heirlooms or gifts, make a note of this on your appraisal for future use.[45]

In this connection, the National Consumer Law Center found that legal aid attorneys considered non-purchase money security interests the single most common basis for threats and harassment of consumers of all of the creditors remedies surveyed.[46] The findings of the NCLC survey are borne out by the testimony received in this proceeding.[47]

The consumer files on this record drawn from the offices of major consumer finance companies contain further examples of threats to seize household goods. Such use of psychological security is recorded on the backs of ledger cards which detail the collection contacts engaged in by the creditor,[48] and in correspondence appearing in the consumer files.[49] Threats may be direct or indirect; they may be made to third parties as well as the principal debtor.[50]

Portland, Tr. 5938; Jonathan Epstein, Newark Legal Services, Tr. 6945; Steven McCabe, Legal Services of New Jersey, Tr. 8731; Robert Gage, Legal Aid of Mecklenburg County, Tr. 1268–69, 1282; Thomas Bothus, Legal Services of Eastern Michigan, Tr. 3058–59; Lawrence Mealer, Dallas Legal Services, Tr. 369; Daniel Hedges, Appalachian Research and Defense Fund, Tr. 11370.

[30] R–GF–6 at p. 19.

[31] R–TF–5–1 at 6 (company Training manual: furniture appraisals).

[32] *E.g.*, Allen Hill, First State Bank of Columbus, R–I(a)–667; Kenneth Davis, Kentucky Finance Company, Tr. 1528, 1546; Helmut Schmidt, Transamerica Finance Corporation, Tr. 6234; Robert Dean, Security Mutual Finance Co., Tr. 186; Tom McEldowney, Idaho Department of Finance, Tr. 5093; Warren Wilfert, Bank of Pennsylvania, R–II(b)–3; Senator Ellis Bodron, Mississippi Consumer Finance Association, Tr. 295; Calvin Phillips, Texas Credit Union League, Tr. 587; Lester Sedowick, New Jersey Consumer Finance Association, Tr. 8392; Harvey Lynch, Glendale Federal Savings and Loan, Tr. 5209–10; Edmund Leong, Hawaii Consumer Finance Association, Tr. 5413.

[33] Tr. 6214.

[34] For instances of actual repossession *see*, e.g., George Prentiss, Citizen's Budget Company, Tr. 4229–31; Earle Nelson, California Department of Corporations, Tr. 5012; Clare Rollwagen, Minnesota Consumer Finance Conference, Tr. 3933; Jonathan Epstein, Newark Legal Services, Tr. 6950; Stanley Calmes, Mississippi Consumer Finance Association, Tr. 280–81.

[35] The record contains examples of seizure which yields little or no economic benefit to the creditor. *E.g.*, R–ASSOC–163 (creditor buys all furniture for $35.00 at sheriff's sale); R–LIB–35 (furniture sold for $150.00); R–XI–LIB–558 (cookware for $45); R–XI–LIB–762 (baby furniture repossessed and sold for $50); Robert Atkinson, Consumer Unit, Legal Aid Service of Portland, Oregon (cost of repossession and storage exceeds value of household goods), Tr. 5918; case history, Summit County Legal Aid Society, R–I(c)–92.

[36] "Q. Did you ever have to junk it?

"A. Yes.

"Q. You have to junk some of it?

"A. Yes, and do you know why, are you interested?

"Q. Certainly.

"A. Let me pose this as a hypothetical case—it is not hypothetical, it is actual. You have a number of families in one area who will be borrowing from you. If this fellow continues to go down the drain and continues to ignore his obligation and you try everything in the world to get him to pay and he is laughing at you and saying——

"Q. You want to make an example of him for other people?

"A. Not necessarily an example. But if you don't you are going to charge off the whole block."

Carl Woxman, North Carolina Consumer Finance Association, Tr. 10238. The maintenance of credibility was offered as a reason for repossession by other witnesses; *e.g.*, Michael Burns, Legal Aid Society of Minneapolis, R–I(c)–93.

[37] Robert Atkinson, Consumer Unit, Legal Aid Service of Portland, Tr. 5918 (woman on public assistance loses furniture).

[38] R–XI–LIB–762.

[39] R–XI–CTA–592.

[40] R–XI–AVCO–559.

[41] R–DIAL–163; R–XI–ASSOC–[illegible]; R–XI–CIT–297; R–XI–TA–70; Eugene Thirolf, Land of Lincoln Legal Assistance Foundation, Tr. [illegible].

[42] *See* Carol Knutson, Neighborhood Legal Services Association, Fitsburg, Tr. 11169, where a creditor advised the witness that furniture would simply be burned. *See also, e.g.*, Harvey Miller, Gateway Loan Co., Tr. 2545 (by implication); William Martin, Oregon Consumers Finance Association, Tr. 7553 (by implication) (borrowers place a sufficiently high value on HHG that repayment of the loan would be insured in accordance with the value the owner places on the security); Edmund Leong, Hawaii Consumer Finance Association, Tr. 5413.

[43] *E.g.*, Earle Nelson, California Department of Corporations, Tr. 5035; Lawrence Mealer, Dallas Legal Services, Tr. 371–77; Edmund Leong, Hawaii Consumer Affairs Association, Tr. 5413; James Sullivan, Department of Consumer Affairs, Missouri, Tr. 4503.

[44] R–LL–5 at 4 (Household Goods—Estimated List, Outside Lookup and Appraisal, New Business #23).

[45] National Consumer Law Center (NCLC) Survey of Credit Contract Practices, Survey, HX–497 at 30–31 (1977).

[46] *E.g.*, Drew Johnson, Lane County Legal Aid, Tr. 6325. "In a clear majority of cases where the client is in default there is a threat to repossess household goods." *See infra* note 51.

[47] *E.g.*, R–DIAL–169; R–BEN–63 ("Work HHG on wife"); R–GFC–597; R–AVCO–149; R–AVCO–63 (threats to take furniture from welfare family with eight children); R–GFC–437.

[48] *E.g.*, R–DIAL–161; R–ASSOC–673; R–DIAL–169; R–CIT–316; R–TA–6; R–DF–1 at 18.

[49] *See, e.g.*, R–XI–165 (Beneficial Finance Company contacted the son of the debtors and

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Chase and recheck is a psychological device in which the Dial office representative visits the uncooperative customer's home specifically for the purpose of rechecking the security * * *. Normally this will arouse concern on the part of the customer as to the reason for the rechecking. You are not to threaten that your branch is ready to repossess the security, merely advise the customers that you do not know the reason for the recheck, that you are just carrying out an assignment, and that if you were in similar circumstances you would contact the office immediately. R-DF1-27. (Dial Finance Company manual).

The record shows that consumer and industry witnesses acknowledge that security interests in household goods are used in a way which is uniquely threatening and disruptive to consumers and their families.[51] Ledger card entries in consumer files include directives such as "work HHG on wife"[52] and similar instructions to apply pressure to family members by threatening destitution.[53] In some cases threats are directed to children and other family members.[54] In others, the creditor will appear at the home and terrify the whole family.[55]

Certain witnesses testified that such threats were never made.[56] Although the Commission recognizes that certain individual creditors may refrain from threatening to seize household goods, the preponderance of evidence supports a conclusion that such threats are commonplace.

A threat to seize family possessions from the home of a consumer is psychologically debilitating and disruptive.[57] This record demonstrates that such threats are made frequently, and that they are harmful in themselves. In recommending that household goods security interests be prohibited, the National Commission on Consumer Finance (NCCF), based on its comprehensive survey of the credit industry, found as follows:

A creditor should not be allowed to take other than a purchase money security interest in household goods.

A creditor should be able to take a security interest in goods which form the basis of the transaction, but security interests in household goods should not be allowed in any loan or consolidation transaction if the goods were not acquired by the use of that credit. In the event of default, such security interest in household goods and the accompanying right to repossess or threat to repossess such goods have far too disruptive an impact on the family life of the debtor to be in the public interest.[58]

Our view of the record supports our similar finding on the disruptive and harmful impact of threats to seize household goods. Because the economic loss to the consumer inherent in the seizure of household goods is so large, the threat to seize is correspondingly substantial. Legal services witnesses and others who appeared and commented in the proceeding offered first-hand experience of the harmful impact of creditor threats to seize furniture and personal possessions.[59]

However, the psychological impact of such threats does not define or exhaust the injury they occasion. It is important to acknowledge, as a general proposition, the position in which consumers find themselves when creditors have a lien on personal possessions. Debtors who are in default and on the verge of having their personal possessions seized are under considerable pressure to make repayment arrangements acceptable to the lender who is threatening repossession. To avoid the greater loss of repossession, such consumers are likely willing to take other steps they would not willingly take but for the security interest. Accordingly, such creditors are in a prime position to urge debtors to take steps which may worsen their financial circumstances.

Such steps may include agreements to refinance debts, and diversion of funds needed for other obligations to pay the creditor holding the security interest. Because of the perceived imminency of repossession, debtors may also forego the assertion of valid or meritorious defenses in their rush to complete acceptable repayment agreements.

Actions such as these are not necessarily harmful in and of themselves, nor are they harmful to consumers in all instances. In other situations, the Commission believes consumers will take such actions only if they are in the consumer's self interest. Faced with the greater loss of a threatened repossession, however, consumers will willingly take steps that avoid immediate repossession, but otherwise worsen the consumer's situation. Faced with a security interest in HHG, consumers may endure lesser injuries to avoid the greater injury of repossession. Because of the security interest, these injuries cannot reasonably be avoided.

The rulemaking record reflects the fact that threats to seize household goods frequently accompany efforts to compel debtors to agree to refinancings of overdue obligations.[60] A refinancing

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threatened to seize his parents' household goods unless he assumed payment).

[51] *E.g.*, Eugene Thirolf, Land of Lincoln legal Assistance Foundation, R-I(c)-20; Drew Johnson, Lane County Legal Aid, Tr. 6325 (threat to seize HHG in clear majority of cases of default); Royal White, White Systems of Jackson, Tr. 213 (term used was "advise" consumers); James Boyle, Texas Consumer Association, Tr. 16; Harvey Miller, Gateway Loan Co., Tr. 2545 (implied threat); Robert Loheit, Chapter 13 Trustee and former finance company operator, Tr. 5743; Carol Knutson, Neighborhood Legal Services Association, Pittsburgh, Tr. 11127; Kenneth Levin, Atlanta Legal Aid Society, Tr. 8275; Mervyn Dynally, Lieutenant Governor of California, Tr. 6527; Robert Gage, Legal Aid of Mecklenburg County, HX-44 at 2 (threat made to debtor's children); Kathleen Keest, Black Hawk County Legal Aid, HX-158 at 2; Lawrence Mealer, Dallas Legal Services, Tr. 371-72; Daniel Hedges, Appalachian Resarch and Defense Fund, Tr. 11370-171; Michael Nelson, Legal Aid Society of Kent County, Tr. 4822; Tom McEldowney, Department of Finance, State of Idaho, Tr. 5074; Roberta Ranstrom, Legal Aid Society of Sacramento, R-II(f)-205; Senator Ellis Bodron, Mississippi Consumer Finance Association, Tr. 295.

[52] R-BEN-88; *See also* R-DIAL-160, (ledger card entry reveals pressure on wife of debtor), R-XI-DIAL-24, (pressure was applied to wife after husband had a stroke).

[53] *E.g.*, R-DIAL-24; R-AVCO-63; R-XI-GFC-190 ($154 owed); R-XI-GFC-497; R-XI-HFC-184, 187, 189; R-XI-TA-8.

[54] *E.g.*, Lois Wood, Land of Lincoln Legal Assistance Foundation, R-I(c)-19 (loan company employee calls his office from debtor's home and describes furniture while wife is present); Robert Gage, Legal Aid of Mecklenburg County, Tr. 1256; James Kocher, Lane County Legal Aid, Tr. 6376 (debtor with six children, the threat itself is injurious). *See also* R-XI-DIAL-183.

[55] Michael Nelson, Legal Aid Society of Kent County, Tr. 4811 (creditor appears with a moving van and threatens to empty the house); Roberta Ranstrom, Legal Aid Society of Sacramento County, R-II(f)-205 ("Give me $50 today or I'll have a truck at your door in the morning and take everything out of your house.") Lois Wood, Land of Lincoln Legal Assistance Foundation, R-I(c)-19; Martha Eller, Puget Sound Legal Assistance, Tr. 6638 ("the sheriff will come with us tonight to get the goods.").

[56] *E.g.*, Clare Rollwagen, Minnesota Consumer Finance Conference, Tr. 3982; Clarence Bleser, Wisconsin Finance Corporation, Tr. 3479; Don Pratt, Hometown Finance Company, Tr. 3103; Kenneth Davis, Kentucky Finance Company, Tr. 1547.

[57] *E.g.*, Martha Eller, Puget Sound Legal Assistance Foundation, Tr. 6638-40; Drew Johnson, Lane County Legal Aid Service, Inc., Tr. 6314-17; Mary Ellen Sloan, Utah Legal Services, Inc. Tr. 7344-45; Land of Lincoln Legal Assistance Foundation, R-I(c)-19, Case Histories A-C; Legal Aid Society of Metropolitan Denver, R-I(c)-45, Case History: Mildred F. and Laurie F.; Bexar County Legal Aid Association, R-I(c)-78 at 2; Robert H. Gage, Legal Aid Society of Mecklenburg County, HX-44, Case History: Glenda Josephs.

[58] *Consumer Credit in the United States*, Report of the NCCF at 27 (1972).

[59] *E.g.*, Tucker Trautman, Colorado Department of Law, Tr. 6477; John F. Robert, Louisiana Consumers League, Tr. 1970; George Wallace, University of Iowa Law School, Tr. 11889; Roberty Lohert, Chapter 13 Trustee (retired), Tr. 5743; Martha Eller, Puget Sound Legal Assistance, Tr. 6638; Robert Gage, Legal Aid of Mecklenburg County, Tr. 1256; Kathleen Keest, Black Hawk County Legal Aid, Tr. 4293; Lawrence Mealer, Dallas Legal Services, Tr. 371.

[60] *E.g.*, R-XI-DIAL-209; Martha Eller, Puget Sound Legal Assistance, Tr. 6642; John Paer, Legal Aid of Hawaii, Tr. 5344; James Boyle, Texas Consumer Protection Association, Tr. 28; Gerald Cope, Trustee, Chapter 13, Southern District of Maine, Tr. 10528, 10545; Kathleen Keest, Black Hawk County Legal Aid, Tr. 4260; Thomas Baltus Legal Services of Eastern Michigan, Tr. 3087; James L. Brown, Center for Consumer Affairs, University of Wisconsin, HX-153 at 5; Eugene Thirolf, Land of Lincoln Legal

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may reduce or defer scheduled monthly payments, but it does so by increasing the overall amount a debtor owes. Although refinancing is appropriate in some instances, it is against the debtor's economic interest in others.[61]

Threats to enforce HHG provisions can also lead to payment of the secured creditor's loan in preference to other, perhaps more immediate needs or obligations.[62] Fear that creditors will make good their threats to seize personal possessions if debtors do not promptly enter into new repayment agreements may also lead consumers to withhold assertion of legitimate counterclaims or set-offs.[63]

In the Commission's opinion, the use of blanket security interests to exhort an overextended or unemployed consumer to make a decision which may lead to increased financial difficulties has many of the attributes of economic duress.[64] Threats to seize the personal possessions of a consumer and his or her family clearly meet many of the criteria for economic duress, especially given the dire financial circumstances in which the consumer finds himself.[65] Although the Commission has premised its findings regarding the unfairness of threats to seize household goods on the resulting psychological and economic injury to consumers, as demonstrated by information contained in the rulemaking record, these common law doctrines provide evidence of public policy supporting the Commission's findings.

Since default most frequently occurs for reasons that are not within the control of the debtor,[66] the threat to seize household possessions causes "great emotional suffering, humiliation, anxiety, and deep feelings of guilt, and this distress can lead to physical breakdowns or illness, disruption of the family, and undue strain on family relationships." [67]

For these reasons, the Commission concludes that non-purchase money security interests in household goods cause substantial consumer injury.

D. Offsetting Benefits

Although the industry acknowledged that household goods generally have limited value and expressed disapproval of threats and harassment associated with their use, the industry maintained that blanket security interests were essential. "This is the edge" that makes the debtor pay.[68] Creditors stated that borrowers are much better disciplined if they pledge their household goods[69] and that the psychological value is essential.[70] Such security interests were felt to enhance a debtor's sense of moral obligation[71] and to encourage prompt payment.[72] It was further argued that the security interest in household goods is evidence of a debtor's good faith effort to repay.[73] In addition, it was stated that many consumers have nothing else to offer as security.[74] Overall, the industry argued that in the absence of household goods security interests costs would increase and debtors will not obtain credit.[75] It should be noted, however, that according to a survey of legal aid attorneys, their experience with legal aid clients indicated that 40 percent of finance company loans containing security interests (principally but not only in household goods) were for home improvements, suggesting that the borrowers were homeowners and therefore may have had other assets to pledge as security.[76]

It was maintained that low-income consumers who have the most problems with collection practices would be denied credit in the event that blanket security interests could not be taken.[77] Individual finance company operators stated that many loans would not be made absent household goods liens.[78] One finance company officer estimated that for his company the charge-off rate for unsecured loans is nearly two-thirds higher than for secured loans, and concluded that "if security was forbidden" and a similar charge-off rate applied to all accounts, bad debt losses would mount and credit restriction would result.[79] Certain industry witnesses considered threats to seize household goods to be a valuable remedy.

Q. What is there about security interests in household goods that seems to qualify an otherwise marginal debtor for credit?

A. Well, there are several things. First of all, I do believe and have experience that household goods do provide some monetary security * * *

Number two, there is a psychological disadvantage to the consumer, in a sense (I hate to use the word "disadvantage"), in fact that we eventually back that truck up, tote his stuff out. His neighbors see it; his friends see it. It is embarassing. It shows up on his credit record as a repossession. Man, next to a charge-off, that about as bad as you can do.[80]

The industry thus maintained, to a varying extent, that the household goods security interest was "a difference between in and out of this business." [81]

Assistance Foundation, Tr. 3364; Carl Woxman, North Carolina Consumer Finance Association, Tr. 10256–257.

[61] *Id. See also, e.g.*, Drew Johnson, Lane County Legal Aid, Tr. 6346–47; Lois Wood, Land of Lincoln Legal Assistance Foundation, R–I(c)–19; Terrance Terauchi, San Mateo Legal Aid, Tr. 7986; Kenneth Levin, Atlanta Legal Aid Society, HX–336 at 11; David Duhon, North Louisiana Legal Assistance, Tr. 1480–J; Stephen Hewitt, Lane County Legal Aid, R–II(f)–281; James Kocher, Lane County Legal Aid, Tr. 6377.

[62] *See, e.g.*, Stephen Hewitt, Lane County Legal Aid, R–II(f)–281 (debtors will give up food and clothing to keep household necessities).

[63] James Boyle, Texas Consumer Association, Tr. 28; John Paer, Legal Aid of Hawaii, Tr. 5344; Allison Steiner, Central Mississippi Legal Services, Tr. 1760; Charles DuMars, New Mexico Law School, Tr. 472.

[64] In this connection, the common law has long recognized that agreements should be set aside where a weaker party acquiesces to a contract in the face of a threatened wrong. Such a contract has no effect because the assent of the weaker party is coerced. *Goldstein v. Enoch*, 248 Cal. App. 2d 891, 57 Cal. Rptr. 19 (1967); *Sun Maid Raisin Growers v. Papazian*, 74 Cal. App. 231, 240 (1925).

[65] *People ex rel. Buell v. Buell*, 20 Ill. App. 2d 82; 155 N.E.2d 104 (1959); *Nixon v. Leitman*, 32 Misc. 2d 461; 224 N.Y.S.2d 448 (1962). The use of unequal bargaining power to force a person in an unusually distressing situation to agree to harsh contract terms has been held to constitute duress at common law. *Oswald v. City of El Centro*, 211 Cal. 45, 292 P. 1073 (1930). Undue influence has been defined as the "taking of grossly oppressive and unfair advantage of another's necessity and distress." Cal. Civ. Code 1575. *See also Campbell Soup v. Wentz*, 172 F.2d 80, 82 (3d Cir. 1949).

[66] *See supra* Chapter III.

[67] Presiding Officer's Report at 139, *citing* Martha Eller, Puget Sound Legal Assistance, Tr. 6340–42.

[68] James White, Council of State Credit Institutes, HX–461.

[69] *E.g.*, Alan Susman, West Virginia State Senate, Owner of small loan company, Tr. 4678; George Prentiss, Citizens Budget Co., Tr. 4230–31.

[70] *E.g.*, Robert Abrahams, Walter E. Heller Company, Tr. 9769; Kenneth Davis, Kentucky Finance Co., Tr. 1528.

[71] *E.g.*, Lester Sodowick, New Jersey Consumer Finance Association, Tr. 8392.

[72] *E.g.*, Alabama Lenders Association, R–I(a)–361.

[73] *E.g.*, Richard Van Winkle, Utah Consumer Finance Association, Tr. 7607; Al Brandt, Brandt Finance Company, Tr. 7521; William Martin, Oregon Consumer Finance Association, Tr. 7563; Stephen Hellerstein, Colorado Industrial Bankers Association, Tr. 7107–03.

[74] *E.g.*, David Wood, Dial Financial Corp., R–I(a)–172; Helmut Schmidt, Transamerica Financial Corporation, Tr. 6190.

[75] *E.g.*, Creighton Lynch, Tr. 1859. *See also* Summary of Post-Record Comments XV–357 at 69, notes 36–38.

[76] NCLC survey, *supra* note 46 at 27.

[77] *E.g.*, Prepared Statement of Robert P. Shay on behalf of the National Consumer Finance Association, HX–434 at 43, 45.

[78] *E.g.*, John Mosley, Mosley Finance Company, Tr. 910; Lester Sodowick, New Jersey Consumer Finance Association, Tr. 8392–93; Burton Caine, Pennsylvania Consumer Finance Association, Tr. 8430; Richard Van Winkle, Lockhart Company, Tr. 7607–03.

[79] William E. Wehner, Household Finance Corp., Tr. 9023. Mr. Wehner acknowledged that recoveries are made on charged-off accounts in some cases. Tr. 9104–05.

[80] John Mosley, Mosley Finance Company, Tr. 945.

[81] Helmut Schmidt, Transamerica Financial Corporation, Tr. 6214. *See also*, Summary of Post-Record Comments HX–357 at 72–73, nn. 70–72. The Presiding Officer further found that "the loss of this right would undoubtedly have very considerable impact on their [creditors'] operations and upon the availability of credit to consumers." *Id.* We consider that this finding is not supported by the preponderance of record evidence, given the

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The rule provision we here adopt meets many of the objections of industry by incorporating substantial modifications (discussed in Section G, below) to the original, more sweeping 1975 proposal which was the prime focus of industry testimony and comment. By enacting a provision which leaves purchase money loans untouched and permits consumers to pledge many valuable possessions as security, we believe the rule meets most of the industry apprehensions that this provision would act to "forbid" security.

Moreover, although the consumer finance industry generally took the position that blanket security interests are essential, individual firms from different states testified as to their capacity to operate successfully without such security. In some cases, firms operated in states which prohibit the household goods secured loan.[82] In other cases, some creditors simply decided not to avail themselves of a blanket security interest, and indicated that they did not perceive any major increase in delinquency or collection problems.[83] Non-consumer finance company creditors testified to their lack of confidence in household goods security interests.[84]

To evaluate the argument that a prohibition of household goods security interests would result in increased default and delinquency and/or a foreclosure of "high risk" consumers from the credit market, the rulemaking staff analyzed data furnished by the National Consumer Finance Association (NCFA).[85] NCFA data on secured and unsecured borrowers reveal no significant difference between the income levels of such borrowers and no significant difference between the level of indebtedness of such borrowers at the time credit was extended.[86] It is important to remember that the rule does not prohibit purchase money security interests or security interests in other than household goods, as defined.

Additionally, the testimony of several state regulators representing states which restrict blanket security interests bears out the statistical evidence that state regulatory schemes that include a restriction on creditors' ability to take blanket security interests in household goods do not have adverse effects on credit cost or availability. Specifically, Thomas Huston, Superintendent of Banking, State of Iowa, testified that the Iowa U.C.C.C. (which, among other provisions, restricts the scope of HHG security interests) had no effect on credit extensions in his state.[87]

From a creditor's standpoint, the facts about the causes of consumer default in credit obligations suggest that the benefits of blanket security interests as a collection device are limited. Given that the majority of defaults occur for reasons beyond the borrower's control,[88] a threat to seize furniture and personal possessions is of marginal value in cases of serious delinquency. Unemployed debtors, or debtors with sudden and substantial emergency expenses are hardly more able to remit monthly payments because they receive a threat to seize the funiture.

E. The California Situation

A special problem was raised by industry witnesses in the State of California. It was argued that the prohibition on blanket security interests in household goods would make it impossible for the consumer finance industry to remain in business, because legal interest rates are tied to the taking of security.[89] The industry maintained that the proposed rule would make it impossible for finance companies to lend under the Personal Property Broker's Law.[90]

The industry maintained that prohibiting security interests in household goods and prohibiting wage assignments would amount to a prohibition against small loan companies doing business in California because the applicable statute defines such lenders as those who take such security and/or wage assignments.

We find that the apprehension expressed by the California finance industry is unwarranted. The record indicates that, in practice, any personal property of any kind will suffice as security for the purpose of the statute.[91] Lenders comply with the California law by taking a nominal security interest in a fountain pen or a ring.[92] They can continue to take similar nominal security interests under the rule we promulgate here.[93] The rule does not require any changes in California statutory law to permit consumer finance companies to remain in business.

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substantial narrowing of the scope of the HHG provision we enact today, as compared to the 1975 proposal addressed by the Presiding Officer. The Presiding Officer also based his conclusion in part on a finding that HHG security interests had "usefulness" * * * in causing the consumer to reaffirm a debt following bankruptcy." Presiding Officer's Report at 311. Given the changes to the Bankruptcy Code under the Bankruptcy Reform Act of 1978 (after the Presiding Officer's findings), this benefit to creditors would be substantially eroded, if not eliminated entirely.

[82] *E.g.*, Bernard Cunningham, Windsor Locks Finance Company, Connecticut, Tr. 8559, *et. seq.* Connecticut prohibits household goods security interests in consumer loans. *See supra* note 10.

[83] *E.g.*, William Lehye, Consumer Loan Company, Tr. 4367, *et seq.*; Fernando Negron, Island Finance Company, Tr. 8639. In these cases, however, there is no evidence that the creditor publicized or otherwise made known the determination not to employ HHG security interests. This is consistent with record evidence showing that, even where differences exist between creditors in the remedies they employ, consumers cannot reasonably differentiate between creditors for purposes of comparing or shopping for different contract remedy terms.

[84] *E.g.*, William Gwennapp, American Bankers Association, Tr. 12200; John Montgomery, Illinois Bankers Association, Tr. 2581; Michael Milroy, Valley National Bank of Arizona, Tr. 5469; Joe Martin, First United Bancorporation, Tr. 1156; Robert Tobey, Consumer Bankers Association, R-I(a)-466; Betty Gregg, Credit Union National Association, Tr. 9690-01; Joan Morton, California Credit Union League, Tr. 7185; G.R. Slater, Harris Bank, R-II(f)-132.

[85] R-XIII-3; R-XIII-37.

[86] For a discussion of staff's methodology and analysis, *see* Staff Report at 233-35; R-XIII-3, Tables 1-4 and accompanying disussion. These data also show a higher average loan amount for secured loans versus unsecured loans. The data confirm that, where HHG security interests are permissible, creditors feel more secure taking such collateral; they do not tell us what happens when HHG security interests are restricted. Comparing data for HHG-restrictive states (Connecticut, Wisconsin, Iowa) with non-restrictive states suggests that creditors do not significantly restrict credit availability in response to curtailment in the availability of blanket HHG security interest. *Id.*

[87] Tr. 2285; *see also* HX-29 at 3 for a similar assessment by the Iowa Attorney General. Mr. Huston recommended an HHG provision which excepts "luxury items" Tr. 2285-86.

[88] *See* discussion *supra* Chapter III; Presiding Officer's Report at 44-52.

[89] *See generally*, testimony of Earle Nelson, California Department of Corporations, Tr. 5008; George Richter, California Loan and Finance Association, Tr. 5865. California, Consumer Finance Association, Post-Record Comments XV-338, at 16-18.

[90] George Richter, California Loan and Finance Association, Tr. 5862. *See also* Staff Report at 238, note 128.

[91] "A close examination of these two forms of security will quickly show that they are largely a fiction device to permit this category of lender to function outside the 10 percent interest limitation." Mervyn Dymally, Lieutenant Governor of California, Tr. 6514.

[92] Earle Nelson, California Department of Corporations, Tr. 5043, 5044-46; George Richter, California Loan and Finance Association, Tr. 5900.

[93] Wage assignments in California, which also qualify a lender as a personal property broker, may only apply to income already earned at the time credit is extended. Such wage assignments are not prohibited by the rule.

Moreover, the rule does not prohibit all security interests in personal property. Purchase money security interests in such property are permitted, as are non-purchase money security interests in other than household goods, as defined, such as jewelry. Finally, there are other statutory alternatives in existence in California, which permit lenders to charge rates in excess of the constitutional usury limitation, and which consumer finance companies use. An example is the Industrial Loan Law under which finance companies may operate that affords a rate structure that is slightly lower than that under the Personal Property Brokers Law. *See, e.g.*, Earle Nelson, California Department of Corporations, Tr. 5043.

F. Conclusion

Evidence of record establishes that non-purchase money security interests in household goods are the products of contracts the terms of which consumers cannot reasonably avoid, and that their use occasions substantial injury. We further conclude, based on the evidence, that such security interests produce injury which is not outweighed by countervailing benefits to consumers or competition. Based on the preponderance of evidence in this record, the Commission therefore finds that the use of non-purchase money security interests in consumer transactions is an unfair practice.

Although the capacity to disrupt the home of a consumer and his or her family has some value to a creditor, the practice elicits minimal benefits in return for substantial injury. This is why the NCCF recommended abolition of non-purchase money security interests in household goods.[94]

The Presiding Officer found that "a grant of a non-purchase money security in household goods has the potential and will, in many cases, result in injury far greater than any benefits to be gained through the use of the credit thereby obtained." [95] We concur.

Finally, this provision has been substantially revised to narrow its scope and increase its clarity. This provision responds to the major concerns raised by the industry and discussed by the Presiding Officer. As revised, the rule will prevent the use of non-purchase money security interests in those household goods that the record demonstrates have little economic value to creditors. The revised rule will not affect other kinds of security interests, nor will it prevent the use of purchase money security interests in household goods.

G. Alternatives considered and modifications adopted.

In the course of proceedings on the rule several problems with the text of proposed section (a)(4) became apparent. Accordingly, the provision we now adopt contains modifications consistent with the information developed.

As proposed, Section (a)(4) would have restricted creditors to a purchase money security interest in the event that the credit extended was used to purchase consumer goods. No other property could be used to secure the extension of credit. Thus, an automobile loan could not be secured by a second mortgage on real estate or by any collateral other than the automobile itself. The industry maintained that this approach was too restrictive, especially in the second mortgage area, and the rulemaking staff concurred.[96] The purpose of this rule is to prevent the use of non-purchase money security interests in those household goods which constitute necessities and not to prevent consumers from borrowing on the equity in their homes, stocks and bonds, etc., or pledging certain valuable assets if they choose to. The language of the provision we adopt eliminates non-purchase money security interests in household goods (as defined) while permitting consumers to agree to second mortgages where it is in their interest to do so. It permits the use of non-household goods collateral, in any appropriate credit transaction, but limits household goods security interests to transactions where the credit received was applied to their acquisition.

In reviewing this rule provison the staff noted an ambiguity as to whether the rule applied to possessory security interests, *i.e.*, property held in the possession of the secured party such as a pawnbroker. Under the U.C.C. pawns and pledges are "security interests" but were not intended to be covered by the rule. Thus Section a(4) has been revised to make it clear that it only applies to non-possessory security interests. This will eliminate any uncertainty as to whether a consumer can pawn or pledge household items. The record furnishes no evidence that such possessory security interests cause any injury.

The rule does not apply to purchase money security interests. When a purchase money loan is refinanced or consolidated, we intend that, for purposes of this rule, the security collateralizing the prior loan can continue to secure the new loan, even if the new loan is for a larger amount or is in other respects a non-purchase money loan. In enunciating our intent for purposes of this rule, we intimate no opinion with respect to different approaches taken by various jurisdictions in analogous questions raised under the Bankruptcy Code.[97]

We adopt a further modification to this section of the rule narrowing the definition of "household goods" to more nearly limit coverage to necessities and to permit the pledge of certain possessions which have significant economic value. This modification has been undertaken in response to comment [98] and to narrow the prohibition to the class of goods for which the injury to consumers from a security interest exceeds offsetting benefits.

Specifically, we define "household goods" in terms of a list of common household necessities, together with some items of uniquely personal value, excluding these categories:

(1) Works of art;

(2) Electronic entertainment equipment (except for one television and one radio);

(3) Items acquired as antiques; and

(4) Jewelry (except wedding rings).

We define "antique" as

Any item over one hundred years of age, including such articles which have been

[94] *See supra* note 58.

[95] Presiding Officer's Report at 162.

[96] Staff Report at 244, note 140.

[97] The issue arises in the context of bankruptcy proceedings because the 1978 bankruptcy reforms provided an exception to the old rule that secured loans survived bankruptcy, for those loans secured by blanket security interests in household goods. 11 U.S.C. 522(f)(2)(A). This has resulted in litigation over the question of whether consolidated or refinanced loans, secured in part by previous purchase money collateral, can be avoided in bankruptcy, *i.e.*, whether they are purchase money loans or HHG-secured loans. Different courts have reached different results. *Compare, e.g., In re Manuel*, 507 F.2d 930 (5th Cir. 1975) *with In re Conn*, 16 B.R. 454 (Bkrtcy., W.D. Ky. 1982) and *In re Russell*, 29 B.R. 270 (Bkrtcy., W.D. Okla. 1983). We intend that, for purposes of this rule, when a loan is consolidated or refinanced, a creditor can retain an existing purchase money security interest in collateral which would otherwise come within the rule's definition of household goods. Thus, analogous "transformation" rules in bankruptcy decisions will have no bearing in determining, for purposes of the rule, the basic character of the collateral at the time of the refinancing or consolidation.

Those jurisdictions that do not follow the automatic transformation rule generally adopt a method of determining the extent of the purchase money interest in the refinanced loan; most often some variant on the first-in; first-out payment method specified in the U.C.C.C. section 2-409. To the extent that this issue arises with respect to our rule, state law should govern the determination of the extent of the security interest. For purposes of determining compliance with the rule, however, we intend that courts should look to the validity of the contract under the rule at the time the contract is signed. Thus, if under applicable state law an interest is in part a purchase money security interest at the time a contract is signed, the contract does not violate the rule, even if the purchase money portion of the interest is exhausted before the end of the contract.

[98] *E.g.*, Thomas Huston, Superintendent of Banking, Iowa, Tr. 2285-88; W.C. Evans, Texas Finance Association, Tr. 960; Clarence Bleser, Wisconsin Finance Corporation, Tr. 3467 ("luxury household goods"), 3472 ("boats, snowmobiles, television sets, pianos"); Harold T. Welsh, Illinois Credit Union League, Tr. 4093-99 (piano); Robert Mallock, Beneficial Management Corporation, Tr. 8577 ("multiple TV's, stereos, home workshops * * *"); Betty Gregg, Credit Union National Association, Inc., Tr. 8565 (jewelry). *See also* Post-Record Comments XV-333 at 53 (finance company); XV-274 (credit union concerned about jewelry); XV-123 (credit union—should exclude things held for investment); XV-213 (credit union—piano "could retain most of its value for the term of a five year loan while a room full of furniture depreciated to next to nothing").

repaired or renovated without changing their original form or character. (§ 444.1(j))[99]

"Personal effects" is not defined in the rule; we intend it to have its commonly accepted meaning as "Articles associated with a person, as property having more or less intimate relation to the person of the possessor * * *."[100] We specifically include wedding rings within the term "personal effects". Other items clearly within the ambit of the term include those which an individual would ordinarily carry about on his or her person and possessions of uniquely personal nature, such as family photographs. Thus, the definition of household goods does not cover items such as boats, snowmobiles, cameras and camera equipment (including darkroom equipment), pianos, multiple television sets, home workshops and the like.[101]

We exclude one television and one radio from the term "electronic entertainment equipment" because, in contemporary society, these items have become virtual necessities. For families in rural or isolated areas, a radio is an absolute necessity. For many—especially disabled or infirm persons, or shut-ins—a television may be an equal necessity. We intend that the term "radio" apply to a conventional, self-contained unit (such as a table model radio, or a transistorized portable radio) with its primary function as a radio. The term does not encompass multi-component audio systems, even though one element of such a system is a radio receiver. Nor does it apply to portable, self-contained, multi-function units (tape recorder/player, amplifier, clock), only one element of which is a radio receiver.

We have provided that wedding rings be included within the term "household goods." This permits consumers to pledge as collateral for non-purchase money loans any items of jewelry, with the exception only of wedding rings, which should be protected because of their unique psychological and emotional value.[102]

To the extent that individual states provide protections substantially equivalent to, or more protective than, this rule provision but do so by specifying a definition of "household goods" that differs in content from that employed in the rule, the exemption provision of the rule (§ 444.5) is available to allow any such state to petition for exemption.

VII. Waivers of Exemption

Section 444.2(a)(2) of the Rule provides that it is an unfair act or practice for a lender or retail installment seller to take or receive from a consumer an obligation that constitutes or contains a waiver or limit of exemption from attachment, execution or other process on real or personal property held, owned by, or due to the consumer.

A. State Law

At common law, all property of a judgment debtor was subject to execution in order to satisfy the judgment debt. Beginning in the nineteenth century, however, most states and the District of Columbia enacted laws that exempted certain property from judicial seizure and sale. The property exempted usually consisted of a homestead and other necessary items, such as furniture, clothing, family Bible, tools of the trade, animals used in farming, etc. Today, many states retain laws containing lists of exempt personalty, while others simply exempt personalty up to a specified amount. Several current statutes combine aspects of both approaches.[1]

The basic reason for exemption laws is to afford minimal protection to debtors and their families by allowing them to retain the prime necessities of life, with a view to preserving the family unit and furnishing the insolvent with nucleus to begin life anew.[2]

Under general principles of contract law, it has been considered that the right to claim an exemption is a personal right to be claimed or waived at the discretion of the debtor,[3] unless state law specifically prohibits such waiver. In a number of states, there appears to be no such legal impediment to waiver of statutory exemptions of personalty.[4] A number of jurisdictions prohibit waivers of exemption based on the strong public interest in protecting improvement debtors and their families.[5]

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[99] The definition is suggested by U.S. Customs description (Tariff Schedules of the United States Annotated (1976) at 52, Schedule 7, Part II, Subparagraph B 766.20).

[100] *Black's Law Dictionary*, at 1301 (4th ed. 1951). *See also Roberts v. U.S.*, 332 F.2d 892, 898 (8th Cir. 1964).

[101] *See supra* note 98. In so defining the term "household goods", the Commission makes no value judgment as to what items constitute "luxuries". We have simply sought to identify, as nearly as practicable, a list of common items which would, in contemporary society, be agreed to constitute necessities. Conversely, we have, in response to record testimony and comment, identified a specific list of exceptions—not necessarily "luxury" items—which are likely to have significant resale value (as most used household goods do not) and in which creditors may still take a security interest.

[102] *See Bingham v. Collection Bureau, Inc.*, 505 F. Supp. 864, 873–74 (D.N.D. 1981).

[1] Alabama, for example, exempts $1,000 of personalty, (Ala. Const. Art. 10, section 204 (1901)), burial plots, church pews, wearing apparel, family portraits, books, and a homestead of up to 160 acres and $2,000 in value. (Ala. Code Tit. 7, sections 625, 628 & 629). North Dakota's homestead exemption has a ceiling of $40,000. (N.D. Cent. Code section 47–18–01 (Supp. 1973)). Texas, in its personal property exemption, includes 5 cows, 1 bull, 20 hogs, 20 goats, 50 chickens, 30 turkeys, 30 ducks, 30 geese, 30 guineas, farming implements, tools, and athletic equipment and other items up to $30,000 for a family. (Tex. Rev. Stat. Ann. Art. 3832 (1935)). Among other items, Pennsylvania exempts leased pianos, melodeons and organs, loaned, leased or conditionally sold ice cream cabinets, and articles on display at a nineteenth century international exhibition in Philadelphia. (Pa. Stat. Ann. Tit. 12, sections 2170, 2172 & 2174 (1876)). Wide variations in the coverage of state exemption statutes precipitated, in part, the federal enactment of a uniform property exemption in bankruptcy proceedings. 11 U.S.C. 522(d).

A few states and the District of Columbia apparently have no homestead exemptions (*e.g.*, Connecticut, Delaware, Indiana, New Jersey, Pennsylvania, Rhode Island), NCFA Comments, XV–343 at A–9. All states which have homestead exemptions also provide for the waiver of such exemptions when the exempt property is given as security for a loan. *See, e.g.*, XV–343 at A–7–9.

[2] *See* Presiding Officer's Report at 98 notes 1 and 3 citing Vukowich, *Debtor's Exemption Rights*, 62 Geo. L.J. 779, at 782–88 (1974); *Mayhugh v. Coon*, 460 Pa. 128, 331 A.2d 452 (1975). In this respect, these laws parallel one of the basic purposes of the bankruptcy laws, allowing debtors and their families to retain property sufficient for a "fresh start" following a financial setback.

[3] *See, e.g., Parsons v. Evans*, 44 Okla. 751, 145 P. 1122 (1915).

[4] *E.g.*, Hawaii, Idaho, New Hampshire, New Jersey, New Mexico, Rhode Island, South Carolina, Texas, Vermont. The NCFA survey found, however, that only six states—Alabama, Georgia, Kentucky, Louisiana, Maryland and Virginia—allow the homestead exemption to be waived by an executory clause without specifically taking a security interest. R–XIII–31 at C–9.

[5] *See, e.g., Mealey v. Martin*, 468 P.2d 985 (Alaska 1970); *Lindsay v. Merrill*, 36 Ark. 545 (1880); *Industrial Loan & Investment Co. of San Francisco* v. Superior Court, 189 Calif. 540, 209 P. 360(1922); *Weaver v. Lynch*, 79 Colo. 537, 248 P. 789 (1926); *Wallingsford v. Bennett*, 12 D.C. (1 Mackey) 303 (1881); *Sherbill v. Miller Mfg. Co.*, 89 So. 2d 20 (Fla. 1956); *Carter's Administrators v. Carter*, 20 Fla. 558 (1884); *Maloney v. Newton*, 85 Ind. 565, (1882); *Curtis v. O'Brien*, 20 Iowa 376, (1866); *Iowa Mutual Ins. Co. v. Parr*, 189 Kan. 475, 370 P.2d 400 (1962); *Moxley v. Regan*, 73 Ky. 156, (1873); *Oxford v. Colvin*, 134 La. 1094, 64 So. 919 (1914); *Maxwell v. Roach*, 106 La. 123 (1901); *Benning v. Hessler*, 144 Minn. 403, 175 N.W. 682 (1920); *Teague v. Weeks*, 69 Miss. 360, 42 So. 172 (1906); *Meyer Bros. Drug Co. v. Bybee*, 179 Mo. 354, 78 S.W. 579 (1904); *Anaconda Federal Credit Union #4401 v. West*, 157 Mont. 175, 483 P.2d 909 (1971); *Kneetle v. Newcomb*, 22 N.Y. 249, (1860); *Dennis v. Smith*, 125 Ohio St. 120, 180 N.E. 638 (1932); *Mayhugh v. Coon*, 460 Pa. 128, 331 A.2d 452 (1975); *Longley v. Daly*, 1 S.D. 257, 46 N.W. 247 (1890); *Mills* v. *Bennett*, 94 Tenn. 651, 30 S.W. 748 (1895); *Bunker* v. Coons, 21 Utah 184, 60 P. 549 (1900); *Slyfield v. Willard*, 43 Wash. 179, 86 P. 392 (1906); *Maxwell v. Reed*, 7 Wis. 493 (1859). Two courts, in dicta, have stated executory waivers are invalid. *Farmers & Merchant's Bank of Sterling v. Hoffman*, 5 Neb. 9, 96 N.W. 1044 (1903); and *Delfelder v. Teton Land & Inv. Co.*, 46 Wyo. 142, 24 P.2d 702, *reh'g. denied*, 48 Wyo. 200, 26 P.2d 153, (1933) (dicta that executory waivers are invalid). *See also* Ariz. Rev. Stat. Ann. section 33–1122 (Supp. 1983–1984) (exemptions do not apply to property used as a security interest or a pledge); Ga. Code

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In most states, the homestead exemption that protects real property may be waived by granting a specific interest in the property by way of a mortgage. The Uniform Consumer Credit Code, as well as the laws of some of the other states, however, prohibits the taking of a security interest in real property as security for loans below a stated amount and by certain types of lenders.[6]

Non-purchase money waivers of personal property exemptions are treated more stringently by the states, particularly where the personal property consists of necessary household goods. Some states prohibit the taking of non-purchase money security interests in all [7] or listed [8] personal property that is the subject of exemptions. In those states where general executory waivers of exemption are prohibited, it is generally done on the basis of the legislative intent in creating exemptions, that is, to protect the debtor and the debtor's family from thought-lessness, extravagance, and improvidence.[9]

State action regarding waivers of exemption reveals the costs and benefits associated with the practice and its restriction, as viewed by the various jurisdictions. The fact that a relatively large number of states have acted in this area is not, in itself, determinative of the unfairness of a practice. Rather, examining state action aids the Commission in identifying the relevant issues in its own assessment of the unfairness of waivers.

B. Prevalence

The rulemaking record establishes that creditors frequently include clauses in their consumer credit contracts that require consumers to waive statutory protections. Although the rulemaking record does not permit a precise determination as to the frequency with which creditors include waivers in consumer contracts, the preponderance of the evidence does support a finding that the use of general waivers of exemption is prevalent, even in jurisdictions in which such provisions would not be given effect.[10] This permits the use of such clauses as *in terrorem* collection devices, illustrating the gap in those states that may prohibit execution on waivers of exemption clauses, but not their inclusion in consumer credit contracts.

C. Consumer Injury

Waivers of state statutory exemptions permit creditors to seize, or threaten to seize,[11] possessions that, by statutory definition, are necessities. Although in contrast to security interests execution on exempt property requires court action, waivers are essentially an alternate means to the same end as non-purchase money security interests in household goods. Thus, the consumer injury is essentially the same as that noted above in our discussion of household goods security interests (Chapter VI).

The record shows that much exempt property has little economic value as collateral, but great economic, psychological, and sentimental value to consumers Generally, waivers are coupled with a blanket security interest in household goods;[12] in other cases such a waiver, standing alone, is used to reach property that would be otherwise exempt.[13]

Because of its low economic value, exempt property is rarely seized.[14] The record, however, reflects indications of actual seizures.[15] The record also shows that threats of seizure, in the context of collection, are frequent.[16] The common inclusion of waivers of exemption clauses in consumer credit contracts, especially in jurisdictions where they are not enforceable, suggests their primary use as *in terrorem* collection devices.[17]

The record also shows that, in some instances, threats to seize exempt property force debtors to pay disputed debts or to waive legitimate claims or defenses that would otherwise reduce or eliminate their debts.[18] Such threats can also disrupt household finances, leading

Ann. section 51-1101 (1979 & Supp. 1982); Ill. Stat. Ann. ch. 110, section 12-904 (Smith-Hurd Supp. 1983); Ky. Rev. Stat. section 427.100 (1970 & Supp. 1982); La. Rev. Stat. Ann. sections 20:1, :32 (West 1979 & Supp. 1983); Md. Com. Law Code Ann. section 11-504 (Supp. 1983); Md. Cts. & Jud. Proc. section 15-602 (1933); N.D. Cent. Code section 28-22-02 (Supp. 1982); Or. Rev. Stat. sections 23.164, .220 (1979); S.C. Code Ann. sections 51-41-120, 15-41-310 (1976); S.D. Comp. Laws Ann. section 44-8-7 (1967 and Supp. 1982) (identifying "absolutely" exempt items not subject to waiver); Va. Code section 34-22 (1978) (waiver of personalty exemption void); W. Va. Code section 38-8-15 (Supp. 1983).

[6] Under U.C.C.C. Section 2.307 supervised lenders may not accept land as security for a loan in which the amount financed is $1,000 or less. Under Section 3.301 of the U.C.C.C., in a consumer credit sale, a security interest may be taken in land to which the goods are affixed or which is maintained, repaired, or improved as a result of the sale of the goods or services if the debt is $1,000 or less. In some states small loan licensees may not take a security interest in land at all. *See, e.g.*, Kenneth C. Davis, Kentucky Consumer Finance Association, Tr. 1527; the same is true in Alabama, HX-5 at 12. *See also* Gordon J. Thomasch, Maryland Consumer Finance Association, Tr. 8916.

[7] *E.g.*, Conn. Gen. Stat. Ann. section 36-236 (West 1981).

[8] *E.g.*, Iowa Code Ann. section 537.3301 (West Supp. 1983-1984); Wis. Stat. Ann. section 422.417 (West 1957 & Supp. 1983-1984).

[9] *See, e.g.*, *Indus. Loan & Inv. Co. of San Francisco v. Superior Court*, 189 Cal. 546, 209 P. 360 (1922); *Sherbill v. Miller Manufacturing Co.*, 89 So. 2d 28 (Fla. 1956); *Iowa Mutual Ins. Co. v. Parr*, 189 Kan. 475, 482, 370 P. 2d 400, 404 (1962); *Benning v. Hessler*, 144 Minn. 403, 175 N.W. 682 (1920); *Mayhugh v. Coon*, 460 Pa. 128, 131, 331 A.2d 452, 455-56 (1975).

[10] Overall, the NCFA survey showed waivers appeared in roughly one-third of precomputed loan contracts and one-fourth of per diem loan contracts, including contracts in states where they are unenforceable. In West Virginia, waivers were used in 91 percent of cash loan contracts. Waivers appeared in at least 70 percent of such contracts in Alabama (81 percent), Vermont (60 percent), Georgia (77 percent), New York (75 percent), and Arizona (72 percent). HX-494 at 35. It is unclear whether these waivers are advance waivers prohibited by the rule of security interests styled as waivers. Presiding Officer's Report at 112. *See infra* Section E. For example, in Alabama, Arizona, and New York, which have declared blanket waivers void, over 70 percent of the contracts surveyed by NCFA for this proceeding contained such waivers. *See* HX-494 at 35. *See also*, Kenneth Levin, Atlanta Legal Aid Society, HX-336.

[11] *See infra* note 16.

[12] *E.g.*, Philip A. Lehman, Legal Aid Society of Mecklenburg County, R-I(c)-77, Case History: Mack.

[13] *E.g.*, Daniel W. Molloy, Legal Aid Society of Mobile County, HX-72 at Exh. 5, (elderly home owner waived a homestead exemption in a $435 note to pay for a chain link fence] and Exh. 6. *See also*, Ken McDuffie, Georgia Legal Services Program, R-I(c)-84; Leonard Green, Wake County Legal Aid, R-I(c)-70, Case History II.

[14] *E.g.*, Karl Friedman, Alabama Consumer Finance Ass'n., Tr. 63; *see also* HX-467, at 32-33; Jonathan Epstein, Essex-Newark Legal Services, HX-578, Tr. 8343.

[15] John F. Robbert, Louisiana Consumer League, Tr. 1970; Richard F. Halliburton, Legal Aid of Kansas City, R-I(c)-102.

See also prepared statement of Robert P. Fickell, Supervisor of the Consumer Finance Section, Ohio Department of Commerce, HX-155. Mr. Fickell stated that in Ohio in 1978, "301 loans would have benefited" from this rule provision. (Although Mr. Fickell opposed the provision, his opposition was based, as was the opposition of other creditors, on a misapprehension that the provision would bar waiver of exemption rights through the grant of a security interest in otherwise exempt property at the time a loan is executed.)

[16] *See, e.g.*, Jonathan Epstein, Essex-Newark Legal Services, Tr. 8343; Herbert Beskin, Charlottesville-Albemarle Legal Aid Society, HX-377 at 5-6; John M. Scaro, Rhode Island Legal Services, Tr. 8970. Although waivers of exemption are not given legal effect until the creditor reduces a claim to judgment, that technical reality does not necessarily stand in the way of creditors' *in terrorem* use of waivers. Such use is abetted by most consumers' unfamiliarity with the technicalities of the legal process in general and, specifically, their unawareness of the significance of waivers (*see supra* notes 10-11).

[17] Note 10, *supra*. *See also*, R-XIII-33 (NCFA state-by-state printout); post-record comment XV-229, Pentagon Federal Credit Union, Virginia ["It is a fear tactic and not normally enforceable."].

[18] *See* NCLC survey, HX-467 at 34, indicating that legal aid attorneys believe threatened use of waivers results in unreasonable settlement of claims at a 20-21 percent frequency. *See also*, Daniel Molloy, Mobile County Legal Aid, HX-72; Kenneth Levin, Atlanta Legal Aid society, HX-336 at 8.

to delinquency on other obligations or resulting in costly refinancing.[19]

Creditors contended that current state law provides adequate consumer protection.[20] Such laws, however, generally do not address either the inclusion of waiver clauses in form contracts or their use for *in terrorem* purposes. The rule provision is aimed squarely at these gaps in state consumer protection schemes.

The preponderance of record evidence causes us to conclude that consumers suffer economic injury, as well as more subjective harm, as a result of practices which flow from the inclusion of this provision in consumer credit contracts.

The rulemaking record shows that most consumers are neither aware of the rights they have under exemption statutes nor of the presence or significance of waiver clauses in their contracts.[21] Creditors do not explain these rights or the contract clause to their customers.[22] Consumers would thus find it difficult to bargain over this provision or shop around for contracts without one.[23] Thus, consumers cannot reasonably avoid the injury caused by waivers of exemption clauses.

D. Offsetting Benefits

Some opponents of this provision contended that some exempt property has economic value as collateral, and that waivers of exemption are necessary to threaten debtors with seizure of the property as a means of inducing payment.[24] This contention assumes that debtors fail to pay on time because they are unwilling to do so. The assumption is contradicted by the finding that most debtor default is the result of factors beyond the debtor's control.[25] To the extent that the clause has any value as a collection device, creditors still have a large number of remedies at their disposal.[26]

A few witnesses predicted that the effect of prohibiting waivers of exemption would be to increase the cost of credit or restrict its availability.[27] In those states that permit waivers, however, the record shows that they result in actual seizures relatively infrequently;[28] this strongly suggests that creditors themselves consider waivers to be of little value.[29] The Presiding Officer found that creditors are generally reluctant to effectuate executory waivers even where both the opportunity and statutory authorization to do so exist.[30]

Based on the evidence, we conclude that the benefits out weigh the costs for this provision. This is consistent with the Presiding Officer's finding that: "taken as a whole, the record supports a conclusion that the prohibition on executory general waivers of all homestead and other exempt property in consumer credit contracts would prevent consumer abuses without doing undue harm to creditors."[31]

E. Alternatives Considered and Modifications Adopted

This provision of the proposed rule received wide support throughout the proceeding. Creditor objections focused on a possible ambiguity which could lead to misinterpretation of the rule. Creditors were concerned that this prohibition, as originally proposed, would outlaw security interests in exempt property as well as waivers of the statutory exemptions, because in some jurisdictions a security interest was styled as a waiver of an exemption for the covered property. The provision we adopt has been revised to make it clear that § 444.2(a)(2) does not apply to security interests in such property if otherwise permitted by the rule and by state law.

As enacted, § 444.2(a)(2) prohibits the use of "executory" or "advance" waivers where there is no security interest in the affected property. Many creditors agree with, or at least have no objection to, this provision as modified.[32]

The provision will not affect existing state law which prohibits enforcement of executory waivers of exemption. But it will prevent creditors from employing executory waiver clauses in all jurisdictions regardless of their enforceability under state law.

VIII. Late Charges

Section 444.4 of the Rule provides that it is an unfair act or practice for a lender or retail installment seller to use any accounting or other method that results in the assessment of multiple late charges based on a single late payment that is subsequently paid.

A. Nature of the Practice

Late or delinquency charges are those the creditor assesses against the borrower when a payment is not made by the due date, although there is usually a grace period of five or ten days before the late charge is imposed. Deferral or extension charges are made by the creditor for extending the period of time within which the debtor may make one or more payments. Late and deferral charges both have a dual purpose. The first is to encourage the debtor to make timely payments; the second is to compensate the creditor for additional costs resulting from a failure

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[19] *See* NCLC survey, HX-467 at 34, showing legal aid attorneys believe delinquencies on other obligations occur 40 percent of the time, payments of disputed claims 39 percent, and costly refinancings 30 percent. *See also,* James Boyle, Texas Consumer Association, Tr. 40.

[20] *See, e.g.,* Herschel Adcock, Louisiana Consumer Finance Association, Tr. 1221; Richard Kohn, Colorado Bankers Association, R-I(a)-472; Clarence Bleser, Wisconsin Finance Corp., Tr. 3476; Burton Caine, Pennsylvania Consumer Finance Association, Tr. 8427.

[21] *E.g.,* Benya F. Marshall, HX-51 at 4; Kayla Vaughn, Missouri PIRG, Tr. 4646-49; Jonathan Epstein, Essex-Newark Legal Services, Tr. 8948; Herbert L. Beskin, Charlottesville-Albemarle Legal Aid Society at HX-377 at 6; Keneth Levin, Atlanta Legal Aid Society, HX-336 at 6. The record contains numerous examples of consumer credit obligations which contain waivers written in nearly incomprehensible legalese. *See, e.g.,* those presented by Daniel W. Molloy, Legal Aid Society of Mobile County, HX-72, Exhs. 1-3 and 5. Thirty-five such notes are included in R-XI-156; other examples are in the consumer account files subpoenaed by the FTC rulemaking staff, *e.g.,* BEN 0100; CIT 0248.

[22] In some states where waivers are permitted, courts disallow them unless made knowingly, voluntarily, and intelligently. *See, e.g., Aetna Finance Co. v. Antoine,* 343 So.2d 1195 (La. App. 1977); *Transnat'l. Consumer Discount Co. v. Kefauver,* 224 Pa. Super. 475, 307 A.2d 303 (1973). *See also* Herbert Beskin, Charlottesville-Albemarle Legal Aid Society, Tr. 8993; Presiding Officer's Report at 107-108.

[23] Indeed, some waivers operate to deny consumers their exemptions even if they move to another jurisdiction. *See, e.g.,* BEN-0018: "* * * waive all rights of exemption under the laws of this or any other state."

[24] *See, e.g.,* C.P. Brocato, Louisiana attorney, R-II(c)-40; Richard Van Winkle, Utah Consumer Finance Association, Tr. 7607; Richard F. Ogle, Alabama attorney, R-II(c)-7.

[25] *See supra* Chapter III.

[26] *E.g.,* garnishment, self-help repossession, direct contacts with the debtor, purchase money security interests, etc.

[27] *See, e.g.,* Robert P. Shay on behalf of the National Consumer Finance Association: "While one can easily assume that such waivers accentuate economic disaster when they hit, there is no doubt in my mind that the taking of such waivers with the consent of the applicant enables creditors to extend credit more prudently to applicants of marginal creditworthiness who might otherwise have to be denied credit * * *." HX-494 at 36.

See, e.g., Herbert Beskin, Charlottesville-Albemarle Legal Aid Society, HX-377 at 5-6; Kenneth Levin, Atlanta Legal Aid Society, HX-336 at 7; NCLC survey results, HX-467 at 33; Karl Friedman, Alabama Consumer Finance Association, Tr. 63.

[28] Additionally, the legal status of a waiver of exemption prevents the creditor from regarding the affected property as a source of significant protection. The waiver does not diminish the property-owner's power of control or alienation because it does not act as a lien or security interest. *See, e.g., Kroenert v. Mead,* 59 Kan. 665, 54 P. 684 (1898); *Benning v. Hessler,* 144 Minn. 403, 175 N.W. 682 (1920).

[29] Presiding Officer's Report at 112-13.

[30] Presiding Officer's Report at 114. *See also id.* at 307.

[31] *See, e.g.,* Post-record Comments: Banks, XV-92, 105, 110, 117, 125, 170, 233, 235, 322, 331; Credit Unions, XV-124, 128, 142, 143, 168, 202, 225, 220, 274, 329.

on the part of the debtor to make payments in accord with the terms of the loan agreement.

The importance of the incentive effect of late charges was emphasized by creditors.[1] Late charges prevent a debtor from converting a precomputed installment contract or a loan into open-end credit.[2] When a consumer is late in making a payment under a precomputed credit contract, the creditor may receive no income for the period of delay; and the delinquent debtor can effectively pay a lower rate of interest than charged consumers who pay on time.[3]

The rulemaking record demonstrates that creditor efforts to collect delinquent payments result in costs significantly greater than those associated with the maintenance of current accounts.[4] These costs include those attributable to additional notices, letters, telephone calls, and personal contacts. The salaries of personnel engaged in such activities are also substantial.[5] To help recover these costs, almost every consumer credit contract contains a provision for the assessment of late charges.[6]

Pyramiding

The practice addressed by revised § 444.4 is known as the "creeping" or "pyramiding" late charge. It comes about by application of an accounting method which results in the assessment of multiple delinquency charges due to a single late payment. The general accounting principle is that payment is first applied to any outstanding late charge, then to the interest charge, and finally to the principal amount of that payment. In "pyramiding" the accounting method works in this fashion: If a consumer's payment is due on the first day of January, for example, and the payment is not made until the 20th day of that month, the creditor assesses a late charge, for example, $5. The February payment and all subsequent payments are made on time. However, by allocating $5 of the February payment to the January late charge and only the remainder to the February payment, the creditor causes the February payment to be $5 "short", hence delinquent. Timely payments in succeeding months are given the same treatment, so that there is a delinquency or late charge for each month. The cumulative impact of repetitive late charges can be substantial.

The staff of the Federal Reserve Board provided another example of late payment:

> In some instances when a consumer makes one late payment, the creditor will treat every subsequent payment as being late. For example, where a consumer makes the third monthly payment one month late under an obligation which is to be repaid in six monthly installments, the creditor may then treat the fourth, fifth and sixth monthly payments as each one being one month late and collect a late payment charge for each of those payments.[7]

The Rule provision is aimed at only the first example, or "pyramiding." In the FRB example where the monthly payment is late but never made current, the effect may be to allow the consumer unilaterally to extend the term of the loan. The missed payment on the third month may not be made up until the seventh month, one month after the termination period of the contract. There are mechanisms in most state laws for deferring payments,[8] subject to the creditor's right to assess and collect a deferral—as opposed to a delinquency or default charge.

B. State Law

States have imposed limitations on the amount that creditors may assess consumers for late charges and deferral fees. The most frequently used state method is to put a "cap" on late charges equal to 5% of each installment more than ten days late or $5, whichever is less. Some states also put a "floor" of 50¢ or $1 on these charges to partially compensate the creditor for its added expense of collecting the late payment.[9] States that have adopted the Uniform Consumer Credit Code expressly prohibit pyramiding of late charges.[10]

C. Prevalence

The record establishes that consumer credit contracts almost uniformly provide for the assessment of late charges and extension charges, although they may not always be assessed.[11] Such charges can be waived to assist debtors in financial distress or to facilitate settlement of delinquent accounts.[12] Although the precise extent of pyramiding of late charges cannot be ascertained from the record, there is evidence that it occurs in most of the

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[1] *e.g.*, W. A. Owens, Public Investors, Inc., R-I(a)-414; Robert L. Ernst, Butler Financial Corporation, Tr. 4166; Helmut Schmidt, Transamerica Financial Corporation, Tr. 6197; David F. Steuber, Standard Oil of California, R-I(a)-238; F. T. Weimer, Sears Roebuck & Company, R-I(a)-427; Jerry T. Bringard, Ford Motor Credit Company, R-I(a)-816; Robert C. Downing, Hudson, Potts & Bernstein, R-I(a)-314, J. William Breman, U.S. League of Savings & Loan Association, R-I(a)-643.

[2] *e.g.*, William G. Thomas, Virginia Consumer Finance Association, Tr. 9175; W. Bhett Tanner, Georgia Consumer Finance Association, HX-171 at 21-22; Don L. Pratt, Indiana Consumer Finance Association, Tr. 3096; GMAC Rebuttal Submission, R-XIII-23 at 31.

[3] T3 E.g., Robert E. Dean, Security Mutual Fianance Corp., Tr. 166. Some state statutes provide for the conversion of a precomputed loan to an interest-bearing loan, but there are, of course, costs in doing so.

[4] *See, e.g.*, William Lehye, Consumer Loan Company, HX-160; Bernard J. Cunningham, Connecticut Consumer Finance Association, TR. 8562; David A. Brooks, Crocker National Bank, Tr. 7931; Richard K. Slater, Consumer Bankers Assn., Tr. 11628; P. Juckett, United California Bank, R-II(d)-78; Harvey Lynch, California Savings & Loan League, Tr. 5219; Vernon Lemens, Jr., Texas Finance Institute, TR. 992-3; R. W. Brooks, First National Bank of Pennsylvania, R-I(a)-246; Patrick W. Harrison, Commerce Union Bank, R-I(a)-195; Robert E. Dean, Security Mutual Finance Corporation, TR. 166; Richard E. Edwards, Pennsylvania Consumer Finance Association, TR. 8507; Teruo Himoto, Hawaii Consumer Finance Association, TR. HX-218 at 10; K. E. Buhrmaster, New York State Bankers Association, R-I(a)-260; A. E. Lewert, Allstate Enterprises, R-I(a)-885; Peter Cumerlengo, First City National Bank of Houston, R-I(a)-502.

[5] *E.g.*, Teruo Himoto, Hawaii Consumer Finance Assoc., Tr. 5388; Alfred J. Lapan, South Middlesex Cooperative Bank and Massachusetts Cooperative Bank League, Tr. 11479. *See also* collection procedure described by Oscar M. Zeno, Puerto Rico Consumer Finance Association, HX-351 at Exh. 2; William E. Wehner, Household Finance Corporation, Tr. 9085; Hyman Weiner, California Loan and Finance Association, Tr. 6488-89; Harvey A. Lynch, California Savings and Loan League, HX-208 at 12; Arthur L. Bronstein, Industrial Bankers Association of Colorado and Colorado Consumer Finance Association, Tr. 5815.

[6] *E.g.*, Consumer Bankers Association survey, HX-490 at Table 6; NCLC Survey of Consumer Law Specialists, HX-467 at 37-38. The National Consumer Law Center reported that legal aid attorneys considered every creditor provided for such charges for an average frequency of 67 percent, that such charges were actually made about 77 percent of the time they were authorized, and that they were included as a part of the claim when suits were filed about 71 percent of the time. HX-467 at 37-38. The Consumer Bankers Association reported the inclusion of late charge provisions in contracts in 88 percent of the personal loans and in 90 percent of indirect automobile loans. In collection suits the provision was used 44 percent of the time as part of the claim in personal loans and in 59 percent of the actions on indirect auto loans. HX-490 at Table 6.

[7] HX-451 at 14-15.

[8] *See, e.g.*, Wis. Stat. § 422.203-204 (1972); U3C §§ 2.204, 3.204 (1968), and § 2.502 (1974); *see generally* CCH Consumer Credit Guide ¶520 at 1401 *et seq.*

[9] Presiding Officer's Report at 193-94.

[10] *E.g.*, Colo. Stat. Ann. sections 5-2-203, 5-3-203 (1973); Idaho Code section 23-32-203 (Supp. 1975); Okla. Stat. Ann. tit. 14A, sections 2-203 to 204 (1963).

[11] Many witnesses reported that late charges are frequently waived, *e.g.*, Richard E. Edwards, Pennsylvania Consumer Finance Association, Tr. 8500; David White, National Association of Federal Credit Unions, Tr. 11095; John R. Shuman, Florida Consumer Finance Association, Tr. 3579; Joseph C. Park, Michigan Consumer Finance Association, Tr. 3182; Harvey R. Miller, Gateway Loan Corporation, Tr. 2530; Bernard J. Cunningham, Windsor Locks Finance, Inc., Tr. 8562; James M. Hassenger, Iowa Consumer and Industrial Loan Association, Tr. 3630. *But see* Robert A. Patrick, General Counsel, Wisconsin Office of Commissioner of Banking, who noted that the large corporations generally operate on a computer system, and the taking of late charges would not likely be left to the discretion of local offices. Tr. 4035.

[12] *Id. See also*, Presiding Officer's Report at 203.

states where it is not specifically prohibited and is sufficiently prevalent to warrant being addressed by this rule.[13]

D. Consumer Injury

The record contains evidence that pyraminding of late charges results in the assessment of charges far in excess of the amounts, if any, actually expended by creditors to collect the account.[14] Indeed the evidence indicates that, where the only delinquency on an account is attributable to a prior late charge, creditors do not persist in collection attempts.[15]

The problem of pyramiding—where a payment is late but is paid in full on or before the next timely payment—is compounded by the fact that the debtor is usually unaware that the late charges are "pyramiding" until the final payment is made.[16] If payments are accompanied by a coupon from a book of coupons given to the consumer at the time the credit is extended the debtor may not receive any periodic statement indicating the amount of late charges as they accrue.

Furthermore, because pyramiding is based on an accounting method, not a contract provision, consumers cannot shop around for credit contracts that do not involve this practice, or otherwise reasonably avoid the injury which flows from its application. This provision will benefit borrowers by reducing late charges assessed for a single late payment.

E. Offsetting Benefits

Only one participant in this proceeding defended the use of pyramiding late charges,[17] arguing that the creditor, seeking to make the account current, incurs collection costs during each period the installment remains unpaid. Because of this continuing effort, the creditor should be permitted to impose a late fee in each period that even a small amount remains unpaid to partially cover the cost of collection efforts during that period.

The evidence, however, establishes that creditors do not persist in collection efforts after a tardy payment is received and the only deficiency is a prior late charge.[18] Where a payment is late but subsequently received, creditors make no further efforts to collect. Therefore, they do not need to be reimbursed for collection expenses after the late payment is received.

Pyramiding of late charges is basically the result of an accounting method. It is thus unknown to consumers and could not therefore serve as a useful deterrent to late payments. Because little or no collection effort occurs after a tardy payment is made, the creditor incurs little or no added collection expense. Prohibiting the use of pyramiding will have little, if any, impact on either the cost or availability of credit. Therefore, benefits to consumers or competition are insufficient to offset demonstrated consumer injury from pyramiding of late charges.

F. Alternatives Considered and Modifications Adopted

Some creditors argued that, because the initial proposal did not address the precise issue of pyramiding, no notice was given of this practice.[19] This is incorrect, because the proposed rule clearly focused on late charges.[20]

As initially proposed, the late charge provision would have prohibited the inclusion of terms in consumer credit contracts permitting charges for late or extended payments that exceeded the amount derived from application of the annual percentage rate governing the transaction to any payment which was late or extended. The evidence adduced in the proceeding does not support a finding that late charges in excess of the APR are unfair. However, the Commission is adopting a revised provision to eliminate "pyramiding" of late charges.

Lenders generally demonstrated that permitted late charges do not always compensate them for the added costs of collecting delinquent payments.[21] Because of this, it is not an unfair practice for creditors to assess a late charge for each payment period that the delinquent principal or interest payment remains unpaid. However, where a tardy payment is paid, and the only deficiency is a late charge imposed on that payment, the late charge itself should not be a basis for imposing further late charges.

Pyramided charges do not compensate creditors for any costs incurred in collection. Such charges simply permit collection of sums over and above principal and interest due; pyramiding constitutes a windfall to the creditor that inflicts substantial injury on consumers that is not reasonably avoidable, without countervailing benefits to consumers or competition. Pyramiding of late charges, therefore, is an unfair practice.

Retailers suggested that open-end credit be exempted from this provision of the rule because no late charge provision is used in such contracts.[22] We adopt a revised proposal which would not affect open-end creditors or any other creditors who do not employ this accounting method.

Several parties argued that late charges should not apply where a partial payment is made. There is inadequate record evidence to justify prohibiting late charges on partial payments. A partial payment, unless it is only partial because of previously due late charges that were "late," is a late payment.

Finally, we have determined that a straight-forward prohibition on the practice of pyramiding is sufficient remedy. Earlier proposals incorporated a requirement that creditors include in each consumer credit contract a clause prohibiting pyramided late charges. We find insufficient record evidence to support such a requirement. Our approach will result in no paperwork burden on creditors and will obviate the need for an unnecessary contract provision as to that substantial body of creditors which does not engage in the practice.

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[13] *See e.g.*, Professor John Spanogle, State University of New York at Buffalo, Tr. 9745; Robert Hilgendorf, Office of the Attorney General of New Mexico, Tr. 10477; Robert C. Focht, Director, Consumer Credit Division, Conncecticut Banking Department, Tr. 11255–56; James L. Brown, University of Wisconsin Center for Consumer Affairs, Tr. 4070–72. *See also*, R–XI–ASSOC–242 (Washington); ASSOC–378 (South Carolina); GFC–230 (Louisisna); GFC–68, 69 (Texas); DIAL–76(Connecticut); CTA–85 (Washington); BEN–119, 129 (New York); CIT–262 (Ohio); R–XI–TF–5–13 at 1409A–B, R–XI–CIT–E at SF403 (finance company manuals containing instructions regarding "pyramiding" late charges); GMAC Rebuttal Submission, R–XIII–23 at 34; and note 17, *infra*.

[14] Note 3, *supra*. *See also* Presiding Officer's Report at 195, and note 16, *infra*.

[15] *See* consumer files cited in note 13, *supra; see also* notes 16, 18, *infra*.

[16] *See, e.g.*, R–XIII–26, consumer complaint #538–77 (South Carolina Department of Consumer Affairs); R–XI–185, memo from Dial Finance Branch Manager to Washington consumer, April 28, 1975.

[17] General Motors Acceptance Corporation, R–XIII–23 at 34, note 70.

[18] Notes 13, 16 *supra*. Professor Robert Shay showed that the average cost to the creditor in collecting a late payment was $31.32, while the average revenue received was $9.49. HX–494 at 55–56. Ford Motor Credit Company reported an $18.5 million excess of costs over revenue. R–I(a)–816 at 32. It is unlikely that efficient creditors would expend such sums to recover a late charge as opposed to delinquent principal.

[19] *See, e.g.*, NCFA comment R–XIII–31 at 103, note 1.

[20] The revised provision can be regarded as a less stringent alternative to the originally proposed rule provision (a)(9), which also would have prevented pyramiding.

[21] *See* Shay, *supra*, note 18.

[22] *See* Comments on the Presiding Officer's Report and Staff Report at XV–299, XV–345.

IX. Cosigners

Consumers who do not meet a creditor's standards for creditworthiness are often required to obtain one or more "cosigners" who agree to be liable for the debt. A cosigner is required to pay if the debtor defaults, but the cosigner receives no monetary consideration for undertaking the obligation, which can become onerous.

A. State Law

The term "cosigner" has no precise legal meaning.[1] The rights and obligations of cosigners are defined by reference to the contracts they sign. The status of a cosigner is that of an accommodation party and surety.[2] The cosigner's obligation is generally the same as that of the principal because cosigners waive traditional rights of sureties.[3]

Except for a few reform statutes, the status of consumer cosigners has not been the subject of legislative or judicial consideration. Most reported cases involve commercial interests. Consequently, the law in this area does not reflect the special problems of cosigners in consumer transactions.[4] In most jurisdictions, the creditor has no obligation to give the cosigner a copy of the contract or advise the cosigner of the extent of his or her liability.[5]

In its report the National Commission on Consumer Finance (NCCF) recommended that:

> No person other than the spouse of the principal obligor on a consumer credit obligation should be liable as surety, co-signer, co-maker, endorser, guarantor, or otherwise assume personal liability for its payment unless that person, in addition to signing the note, contract, or other evidence of debt also signs and receives a copy of the separate co-signer agreement which explains the obligations of a co-signer.[6]

Section 3.208 of the 1974 version of the Uniform Consumer Credit Code (U.C.C.C.) followed the NCCF's lead with a similar recommendation.[7] Several states require written notice to cosigners.[8]

B. Use of Cosigners

Cosigners were employed in 2 percent of the cases sampled by the National Consumer Finance Association.[9] Individual small loan companies indicated that they use cosigners from 10 percent [10] to 95 percent of the time.[11] A survey by the Consumer Bankers Association showed that 7 percent of responding banks "usually" or "often" encourage cosigners.[12] A survey by the National Consumer Law Center which focused on low-income consumers, reported that legal aid attorneys estimated that finance company creditors use cosigners other than spouses 41 percent of the time, banks use non-spouse cosigners 31 percent of the time, and credit unions use them 20 percent of the time.[13] Finance company files on the record also reflect the use of cosigners.[14] The record establishes that creditors seek and obtain cosigners at the time of initial extensions of credit and to secure delinquent accounts in a significant number of cases.[15] Some witnesses stated that parents are the most frequent non-spouse cosigners.[16] Other relatives, friends and employers are also used.[17]

C. The Unfairness of Failure To Disclose Cosigner Liability

The consumer injury addressed by § 444.3 of the rule is occasioned in some cases by the failure of creditors to inform potential cosigners of their obligations and liability (an unfair

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[1] Presiding Officer's Report at 265–267.

[2] For a discussion of the legal background, *see* Staff Report at 421–422. A surety is liable upon default of the principal for the full amount of the obligation. The common law does not protect cosigners where they waive their rights. *Massachusetts Bonding & Ins. Co. v. Fentz*, 182 F.2d 752 (8th Cir. 1950); *McElroy v. Mumford*, 28 N.Y. 502, 28 N.E. 502 (1891).

[3] Restatement of Security section 82, comment (g) (1941). This extended liability also means that where the contract so provides, the surety is liable with the principal for the payment of attorney's fees, late or extension fees, and other penalties though sureties have been held not be be liable for interest above the contract amount of for attorney's fees where the contract did not provide. *Universal CIT v. Auerback Cleaners*, 162 N.Y.L.J. at 16 (N.Y. Civ. Ct. 1969). *See, e.g.*, R–XI–CIT–A–902, R–XI–DIAL–202, R–XI–CTA–159, R–XI–ASSOC–23, R–XI–LIB–340, R–XI–GFC–292, R–XI–TA–19, R–XI–BEN–51.

The Dial Financial Corporation Surety Agreement states: "It being the intention hereof that the undersigned shall remain liable as principal[s] until said obligation with charges, if any, has been paid, notwithstanding any act or thing which might operate as a discharge or surety." Dial Form No. 1098 H68 (surety agreement). R–XI–Dial–202.

[4] The reason for the paucity of case law in this area is that cosigner contracts, like others, are construed according to their terms. The agreement which a cosigner executes is a standard form contract drafted by the creditor to create equal liability between debtor and cosigner and to waive any defenses which a surety would otherwise have. Such contracts leave little for the courts to construe in the cosigner's favor, and parole evidence is not admissible in suretyship cases. Peters, *Suretyship Under Article Three of the Uniform Commercial Code*, 77 Yale L.J. 833, 855 (1968).

[5] Presiding Officer's Report at 264.

[6] Report of the National Commission on Consumer Finance, Consumer Credit in the United States 39 (1972).

[7] The U.C.C.C. also requires that cosigners be given a copy of the debtor's contract, as well as the cosigner agreement. For full text, *see* section 3.208.

[8] Wisconsin, Illinois, California, West Virginia, Iowa, Colorado and South Carolina. NCFA Rebuttal Submission, RXIII–31 at C–28. *See also* Staff Report at 425–426, notes 17–20.

[9] Robert P. Shay, National Consumer Finance Association, HX–494, pp. 61–63.

[10] Harvey R. Miller, Gateway Loan Corp., (10 percent) Tr. 2533; David H. Curtis, Confidential Loan Service, (10 percent) Tr. 2579. Harold T. Welsh, Illinois Credit Union League stated that 15 percent of his credit union's outstanding loans involve cosigners, Tr. 4123. Bernard J. Cunningham, Windsor Locks Finance, Inc., Connecticut, states that his finance company has cosigners on 20 percent of its loans, Tr. 8584.

[11] Jorge Vilches, Puerto Rico Consumer Finance Association, (95 percent) Tr. 8592. Richard C. Durham of the Asociacion Puertorriquena de Financieros del Consumidor cites a survey by that association of the consumer finance industry in Puerto Rico showing that 83 percent of the 353,338 loans outstanding as of March 31, 1975, had cosigners other than the spouse of the principal borrower. R–I(a)–820. Larry B. Keeler, Commalo Co., Inc., Puerto Rico, states that his company makes two-thirds of its loans of under $600 with cosigners. R–I(a)–718.

[12] Richard K. Slater, Consumer Bankers Association, Tr. 11618.

[13] Mark Leymaster, National Consumer Law Center, HX–467 at 35. One finance company stated that some of its loans require as many as six cosigners, so the number of cosigned loans may understate the number of consumers affected by this practice. Jackson W. Guyton, Mutual Savings Credit Union, Fairfield, Al, R–II(1)–60 at 3.

[14] *See, e.g.*: *R–XI–GFC–*: 8, 10, 19, 20, 35, 50, 52, 53, 56, 57, 58, 59, 61, 148, 153, 154, 200, 333; *R–XI–LIB–*: 228, 232, 337, 338, 339, 340, 342, 344, 347, 358, 359, 533, 579, 597, 65, 77, 570; *R–XI–AVCO–*: 93, 164, 323, 351, 459, 822; *R–XI–HFC–*: 77, 109, 212; *R–XI–GECC–*: 7, 11, 152; *R–XI–ASSOC–*: 1, 591; *R–XI–BEN–*: 9, 13, 15, 19, 42, 51, 104, 160, 209, 235; *R–XI–CTA–*: 1, 2, 7, 115, 160; *R–XI–TA–*: 35.

[15] *E.g.*, cosigners were obtained at the time of the initial extension of credit in:

R–XI–DIAL–: 67, 90, 112, 123, 128, 37, 40, 44, 53, 63, 139, 140, 143, 153, 154, 158, 159, 174, 178, 193, 204, 210, 215.

R–XI–CIT–: 4, 6, 24, 29, 35, 39, 57, 100, 169, 178, 179, 180, 181, 185, 194, 203, 208, 217, 219, 234, 239, 242, 264, 267, 335, 343, 385, 388, 392, 407, 412.

Cosigners were obtained after the initial extension of credit and after a default had occurred in, *e.g.*:

R–XI–DIAL–: 31, 42, 43, 45, 48, 43, 57, 64, 129, 134, 175, 191, 193, 200, 202, 217.

R–XI–CIT–: 183, 203, 248.

See also testimony of Clare A. Rollwagen, Maryland Consumer Finance Conference, Community Credit Company, Tr. 3367.

Cosigners were solicited after serious delinquency on the part of the principal debtor in, *e.g.*:

R–XI–DIAL–: 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 33, 39, 41, 58, 61, 102, 111, 113, 115, 127, 135, 137, 153, 172, 213, 214.

R–XI–CIT–: 212, 216, 223, 249, 250, 255, 258, 259, 273, 287, 288, 291, 301, 318, 324, 343, 385, 423, 434.

[16] *E.g.*, Joe Martin, 1st United Bancorporation, Tr. 1165.

[17] *E.g.*, Ronald L. Polk, Arizona Consumer Loan and Finance Association stated that their practice is to take only immediate family members as cosigners, R–I(a)–460 at 3. Robert E. Ericson, DNA Legal Services, Window Rock Reservation, stated that parents, relatives, and friends are obtained as cosigners in his experience, Tr. 1675. Charles L. Childers, Tyler Bank and Trust Company and Texas Bankers Association, states that employers are also usual cosigners, Tr. 1200. Ford Motor Credit estimates that more than half of its non-spouse cosigners are parents or other relatives, R–I(a)—816.

practice) and, in other cases, by affirmative creditor misrepresentations concerning such obligations and liabilities (a deceptive practice). Section 444.3(a)(2) of the rule provides that it is an unfair practice to fail to disclose to a potential cosigner the nature of the liabilities undertaken by becoming a cosigner.

The record establishes that creditors fail to disclose the nature and extent of cosigner obligations. Although some creditors stated that they explain the implications of cosigning a loan,[18] and may do so quite colorfully,[19] the preponderance of evidence causes us to conclude that a large number of creditors are not so enlightened. Finance company operating manuals included in the record do not instruct their employees to provide an explanation.[20] Creditors testified that they do not provide cosigners with explanations of the obligation undertaken,[21] and that they often never see the cosigner, but direct the principal debtor to obtain the signature of a friend or relative on the contract.[22] Thus, failure to disclose the nature and extent of cosigner liability is prevalent.

1. Consumer Injury

As might be expected, creditors seek to collect from cosigners when the principal debtor defaults. In the NCFA sample, creditors demanded payment from cosigners in 74.7 percent of the precomputed loans and 72.5 percent of per diem loans upon default.[23] A banker stated that his bank collects from cosigners in 75 percent of all defaults.[24] The evidence shows that cosigners are relied upon for repayment by creditors, and are subject to the full range of collection tactics, including those addressed by other sections of this rule.[25] The sudden liability that can result from cosigner status can cause over-extension when a consumer is confronted with a debt, the timing of which cannot be controlled by the cosigner because it is due to nonpayment by the principal debtor. A study by David Caplovitz indicates that 6 percent of all consumer default is due to cosigner liability.[26]

Because of the range of potential liabilities, many consumers might not have become cosigners had they known the likely costs of doing so.[27] When cosigner obligations are explained:

> A whole bunch of them have said "never looked at it that way * * * ain't no way I'm going to do this." (Henry Goodman, Arizona Finance Co., Tr. 7763).

Cosigners thus undertake obligations which they might not have undertaken had they understood them, and suffer economic and other hardship as a result when called upon to repay.[28]

2. Reasonable Avoidance

Despite the high likelihood that they will be asked to pay in the event of default, many cosigners are unaware of the nature of the obligation they undertake absent a disclosure. Some believe that they are merely acting as a reference.[29] Legal aid attorneys estimate that only 20 percent of cosigners understand the nature and extent of their obligation.[30] Although some cosigners are aware of the basic fact of liability,[31] even cosigners who realize that they are not merely references are often not fully aware of the extent of their obligation.[32]

At common law, creditors had an obligation to exhaust their remedies against the principal before seeking payment from a cosigner.[33] This requirement was consistent both with the economic role of the cosigner in the transaction and with cosigners' expectations.[34] Many current cosigner contracts, however, contain a waiver of the requirement that the creditor first pursue the principal.[35] Thus, upon default, the cosigner may be required to pay even if the principal has assets from which the creditor could be paid.[36] Some finance company manuals instruct employees to make cosigners the focus of collection efforts once the principal debtor has become more than minimally delinquent.[37]

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[18] *E.g.*, William Probasco, Mid Valley Time Loan and President, California Loan and Finance Associations, Tr. 6146; Don E. Lewis, American Bank and Trust Co., North Carolina, R-I(a)-81.

[19] "I generally tell any cosigner that a cosigner is a damn fool with a pencil." George Bartlett, Home Credit Company, Wyoming, Tr. 7776.

[20] One finance company's training manual directs employees to provide copies of documents to cosigners (AVCO Manuals, R-AFS5), but the training manuals of other companies are silent on the subject. *See generally*, finance company manuals in record binders 215-42-1-12 (1-1) through (1-19).

[21] *E.g.*, Carl B. Friedman, Alabama Consumer Finance Association, Tr. 97.

[22] *E.g.*, Joe Martin, 1st United Bancorporation, Tr. 1158; Jackson W. Guyton, Mutual Savings Credit Union, Alabama, R-II(1)-80 at 3.

[23] Robert P. Shay, NCFA, HX-494 at 61-63. NCFA 1975 Financial Facts Yearbook quoted by W. E. Van Norman, American Investment Company, St. Louis, R-II(1)-330 at 4.

[24] Joe Martin, 1st United Bancorporation, Tr. 1157.

[25] *E.g.*, R-XI-DIAL-37, 44, 46, 57, 58, 87, 90, 112, 123, 128, 174, 191, 193, 204, 210, 215, 217. In file 175, a note of 10/8/70 says, "called sur. [surety, the debtor's mother] and gave good grind. S[he] all upset." R-XI-CIT-6, 24, 35, 208, 208, 219, 248, 267, 343, 362, 407, 416. Cosigners' household goods were taken as security, R-XI-DIAL-156, 174. *See also* testimony of Hyman Weiner, Tr. 6483. In R-XI-CIT-242 and R-XI-LIB-338 and 368 wage assignments were taken from cosigners. Additional evidence of this practice is found at R-XI-188, #2.

Suit and judgment against cosigner: See, for example, R-XI-DIAL-40, 174, 191, 215, 217, and R-XI-CIT-4, 29, 35, 39, 57, 100, 194, 219, 239, 324, 343.

Garnishment of cosigner's wages: *E.g.*, R-XI-CIT-100, R-XI-CIT-178, 188, 219, 324, and R-XI-AVCO-822.

Threats directed to cosigner: *E.g.*, R-XI-CIT-169.

[26] Caplovitz, *Consumers in Trouble*, (N.Y. 1974), p. 77.

[27] *See, e.g.*, Patrick C. Ryan, Administrator, Consumer Affairs, State of Oklahoma, Tr. 753; Bryce A. Baggett, Oklahoma Consumer Finance Association, Tr. 890-92; Sidney Margolius, columnist, New York, Tr. 11203. R-XI-181-01; R-II(1)-414.

[28] *See supra* notes 25-27.

[29] *E.g.*, Nancy L. Henry, Community Assistance Program, Antipoverty Program of Racine, Wisconsin, Tr. 5554; R-XI-HFC-157; Robert C. Focht, Director of Consumer Credit Division, Connecticut Banking Department, Tr. 11246; Ben. T. Reyes, Texas State Representative, Houston, Tr. 1660; Drew Johnson, Lane County Legal Services, Inc., Oregon, Tr. 6319; John F. Robbert, Louisiana Consumer League, Tr. 1968; Alan D. Burke, Legal Services, Legal Education Program, Indiana, R-I(c)-31; Barry H. Powell, Community Legal Services of Mississippi, Inc., R-II(1)-122. Some evidence indicates that this may be true for a majority of cosigners. Mark Leymaster, National Consumer Law Center, HX 467.

[30] NCLC Survey, HX-467 at 36.

[31] *E.g.*, Leslie R. Butler, Consumer Bankers Association, HX-488 at 18; Gayle C. Williams, Legal Aid Society of St. Louis, Tr. 4620-21; Craig James, Idaho Legal Aid Society, Tr. 7071-72; David R. Duhon, North Louisiana Legal Assistance Corporation, Tr. 1480 U-V; Fernando Acevedo, Esq., Tr. 8656.

[32] *E.g.*, Agnes C. Ryan, Legal Aid Bureau of Chicago, Tr. 2235-36; Kayla Vaughan, Missouri Public Research Group, Tr. 4659; Gayle C. Williams, Legal Aid Society of St. Louis, Tr. 4609-12; Jonathan Epstein, Essex-Newark Legal Service, Tr. 6959; Sidney Margolius, columnist, New York, Tr. 11208; Drew L. Johnson, Lane County Legal Aid Service, Inc., Tr. 6319; Judge Arthur L. Dunne, Cook County, Illinois, Tr. 2738. Some industry members agreed that cosigners do not fully understand their liabilities; *see, e.g.*, Robert P. Shay, NCFA, HX-494 at 59-60; Bryce A. Baggett, Oklahoma Consumer Finance Association, Tr. 895-98. *See also* Presiding Officer's Report at 272-276.

[33] The common law background of cosigners' liability is reviewed in detail at pp. 421-424 of the Staff Report.

[34] *E.g.*, Gayle C. Williams, Legal Aid Society of St. Louis, Tr. 4609; Royal White, White Systems, of Jackson, Inc. and Mississippi Consumer Finance Association, Tr. 205; FTC New York Regional Office Study, R-XI-9; Lois J. Wood, Land of Lincoln Legal Assistance Foundation, East St. Louis, Illinois, R-I(c)-19; consumer complaint letter, R-XI-188; Thomas J. Tahnk, Supervisor, Minnesota Office of Consumer Services, Tr. 2901.

[35] *See, e.g.*, R-XI-CTA-62, R-XI-ASSOC-92, R-XI-LIB-115, R-XI-CIT-A-302. *See also*, R-XI-185-02.

[36] *See, e.g.*, R-XI-DIAL-12; Mary K. Gillespie, San Francisco Neighborhood Legal Assistance Foundation, HX-224.

[37] *E.g.*, DIALogue #3. Collection Conversations. Dial Form 270 G70, p. 4 R-XI-DF-9. Branch Manual, Collections, Letters, and Forms for Early Collection Efforts, No. 6311:1 R-XI-DF-9. Write Letters Right, Dial Finance Company, Letter to Endorser, p. 33, R-XI-DF-7. The Job Ahead: Credit Manager, Dial Finance Company, Collection Chart, p. 26, R-XI-DF-3.

Of course, the contract a cosigner signs sets forth the basic fact that the cosigner is liable. Thus, potential cosigners might avoid the injury that stems from the creditor's failure to disclose by carefully reading the contract document itself. The question is whether, in the circumstances, consumers can reasonably avoid injury by reading and understanding the contract.

The record reveals in these circumstances they cannot.[38] As noted earlier, consumer credit contracts are written in technical language that is difficult for consumer to understand.[39] The record also indicates that cosigners are no more likely than other consumer borrowers to comprehend contract language.[40] Moreover, most cosigners are not provided with copies of the documents they sign or of documents received by the primary debtor.[41] In any event, the entire transaction is often conducted very quickly,[42] leaving little opportunity for the potential cosigner to consider the contract carefully.

In addition, the circumstances under which cosigners are solicited make it unreasonable to expect the potential cosigner to read and consider the contract. Consumers who might otherwise be attentive to the nature of agreements they enter into may be less cautious when they agree to be cosigners. Cosigners are often sought under circumstances that may not allow for a decision in the cosigner's best interest.[43] Many loans in which the creditor seeks a cosigner would not be made if a cosigner is not obtained.[44] Thus, cosigners may be subject to pressure from both the borrower, who may urgently need the loan, and the creditor, who may question the cosigner's loyalty to the borrower if he or she hesitates to cosign.[45] In such circumstances, cosigners may be reluctant to explore fully the legal ramifications of their actions.

Thus, the record establishes that cosigners often incur liability but are seldom informed of their liability. Because they are frequently not aware of the nature and extent of their obligation,[46] cosigners cannot reasonably rely on their general understanding of the transaction to avoid injury. Because the contract itself is difficult to understand and may be available only briefly, consumers cannot reasonably avoid injury by relying on the contract itself. For these reasons, the Commission concludes that cosigners cannot reasonably avoid the injury that stems from the creditor's failure to disclose.

3. Offsetting Benefits

This record contains substantial evidence that creditors do not now provide cosigners with the information they need to make informed decisions, and that considerable pressure attends the solicitation of cosigners in connection with the collection of delinquent debts.[47] The detriment to cosigners from the lack of information is not offset by benefits to consumers or competition.

Certain benefits may flow to the consumer who is the principal debtor for a cosigned loan, and there may be benefits to competition from the greater number or size of loans which can be extended when a cosigner shares liability for the debt. The rule, by leaving the use of cosigners unaffected, will have no effect on any such benefits. The rule will insure that an informed decision is made prior to consummation of a cosigner agreement.

The primary offsetting benefit of failing to disclose liability is that creditors thereby avoid the cost of making the disclosure. Testimony based on creditor experience, however, suggests that the cost of providing the cosigner with the required disclosure will not be great.[48] Moreover, some creditors testified that they now provide such notices to cosigners or conduct interviews with them.[49] Others stated that they were not opposed to providing a notice and predicted that it can be provided without difficulty.[50]

4. Summary Concerning Unfairness

Failure to disclose produces injury because the extent of liability is a material fact that would likely affect the cosigner's willingness to undertake the

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[38] In other circumstances, Section 5 may not require a disclosure of the meaning of the contract. If the contract were clear and understandable, consumers could reasonable avoid injury by reading the contract itself. Thus, the prerequisites for a finding of unfairness would not be met.

[39] *See supra* Chapter III.

[40] *E.g.*, Leslie R. Butler, Consumer Bankers Association, HX-488 at 18.

[41] *E.g.*, HX-491 at Questions 2(a) and 2(b); James Hix, National Bank of Commerce, Dallas, Tr. 1934; Toby J. Rothchild, Legal Aid of Long Beach, California, Tr. 6804; Consumer Complaint Letters, R-XI-188, R-II(b)-414; H. Robert Erwin, Jr., Legal Aid of Baltimore, Tr. 10627-28, 10065; Cary Reisman, Legal Aid Foundation of Los Angeles, Tr. 7145; Scott Williams, Charlottesville-Albermarle Legal Aid Society, Virginia, R-XVI-15; George Corsetti, Michigan Association for Consumer Protection, Tr. 10503; consumer complaint letter, R-II(1)-317; Harold T. Welsh, Illinois Credit Union League, General Foods Employee Credit Union of Kankokee, Illinois, Tr. 4127; Robert L. Hancock, Southside Loan Company, Georgia, R-II(c)-34; Burton Caine, Pennsylvania Consumer Finance Association, Tr. 8446; William I. Levenson, National Home Furnishings Association, Tr. 8355; B.M. Tapley, Harter Bank and Trust, Ohio, R-II(c)-38; R-II(1)-414; R-XI-DIAL-174 and R-XI-185-01.

[42] *See infra* note 53.

[43] *E.g.*, Pamela Piering, C.A.M.P. Consumer Action Project, Tr. 6877; Steven P. McCabe, Consumers League of New Jersey and Legal Services of New Jersey, Tr. 87339-8740; Ronald A. Gall, Wisconsin Consumers League, Consumer Budget Counseling Service, Tr. 3376; Joseph Elder, Legal Aid of Louisville, Tr. 3271; Gayle C. Williams, Legal Aid Society of St. Louis, Tr. 4912.

[44] *E.g.*, Leslie R. Butler, Consumer Bankers Association, HX-488 at 25; Bryce A. Baggett, Oklahoma Consumer Finance Association, Tr. 839-84. *See e.g.*, Robert P. Shay, NCFA, HX-434 at 63.

[45] *See, e.g.*, the CIT Loan Procedure Manual:

"The customer will usually be very receptive to contacting his relatives, because you have * * * [c]aused him to think in terms of personal losses such as security, etc."

"* * * It is not desirable to contact a professional man when other qualified signers are available because professional friends or relatives are inclined to consider themselves experts on financial matters and often prefer to give lengthy financial advice and counseling rather than to actually co-sign the note."

"Should the prospective endorser hesitate, ask questions such as 'You do trust (Joe), don't you?' "

"The prospective signer is at the psychological disadvantage of having his decision known immediately to his relative or friend. If handled tactfully and efficently, he will almost always sign the note in preference to having his relative or friend feel that he does not trust him or is unwilling to assist in his time of need."

"*Always obtain the co-maker's signature as soon as he has indicated his willingness to sign.*" (emphasis in original).

"The actual signing of the co-maker should precede your interview for basic application information * * * do not jeopardize the co-maker's signing by pursuing at length the completion of application * * *." R-XI-CIT-E, § L418 at 10-18.

[46] *See supra* notes 10-13.

[47] *See supra* notes 21-22, 43, 45.

[48] *E.g.*, Mel Neuberode, National Association of Federal Credit Unions and Manager, CCI-Marquardt Federal Credit Union, Tr. 7219-20.

[49] The following creditors stated that they presently interview or counsel cosigners concerning their liability: Mel Neuberode, National Association of Federal Credit Unions and CCI-Marquardt Federal Credit Union, Los Angeles, Tr. 7220-7221; Bernard J. Cunningham, Connecticut Consumer Finance Association and Windsor Locks Finance, Inc., Windsor Locks, Connecticut, Tr. 8364. The following creditors stated that they now give a notice similar to that required by the rule: Merced School Employees' Federal Credit Union, Merced, California, R-II(1)-59; The West Bend Co., Wisconsin, R-II(1)-492; Hyman Weiner, Atlantic Finance Co. and California Loan and Finance Association, Tr. 6487; Marcus A. Brown, Island Finance Corp. of Puerto Rico, Tr. 1359.

[50] *E.g.*, J. M. Tapley, The Harter Bank and Trust Co., Ohio, R-II(1)-162; 1st City National Bank of Houston, R-II(1)-223. One creditor suggested that providing the notice would ultimately decrease creditor costs:

"If a cosigner does not have a clear understanding of his obligations and a full and complete acceptance of his obligations, then it makes collection much more difficult and consequently increases collection costs to the creditor. Accordingly, we commend the language in the proposed notice and suggest that even if it is not adopted in the rule that it would be well for creditors to use it voluntarily." Vernon Lemens, Jr., Texas Finance Institute, Tr. 1021-1022.

obligation.[51] Consumers cannot reasonably avoid injury because lenders do not explain or disclose liability and there are no low cost alternative sources of information. Many potential cosigners might choose differently if they had full information on the extent of their obligations and liability. The offsetting benefits of avoiding the cost of disclose are minimal. We conclude, therefore, that failure to disclosure cosigner liability is unfair.

D. Deceptive Representations Concerning Cosigner Liability

The record shows that in some instances creditors misrepresent the nature of cosigner liability.[52] A legal services representative described questionable representations made to his clients when they cosigned:

We have litigated seven cases where cosigners have been sued for payment when the principal defaulted and have found the scenario runs somewhat like this. At the time of the initial contract the salesman will explain to the principal that their credit is unestablished (or bad) and that the business needs someone to "vouch" for the principal's honesty, ability to pay, whatever. One strand is common, at no time is the cosigner told "you will be liable for payments if the principal defaults." Sometimes the cosigners are told that they are witnesses to the contract, and at any rate the entire transaction is handled very quickly. The note is then discounted and when default occurs, there is only testimony of the cosigner as to what the salesman said at the time of the original signing. Of course, the business is no longer a party and the salesman is most likely gone, (and so then is the cosigner's money.)[53]

Similar practices are apparent in the following case history offered by a consumer:

[My husband] was asked by his brother to sign some papers. I said I didn't want to get involved with any cosigning. But Dial Manager and [the debtor] said it wasn't cosigning. It was just a note of agreement to [the debtor's] character. So my husband signed it. But I still refused to so I didn't. Now Dial is trying to make us pay Dial for the [the debtor's] bill because they claim my husband signed a cosigner note. And can take him to court if he doesn't pay. They never did give him a copy of what he signed. [54]

The nature of such deceptive practices makes detection difficult, and the rulemaking record does not permit a precise measure of the prevalence of outright deception. Nonetheless, the clear evidence of affirmative misrepresentations which do appear on this record [55] convinces us that deceptive practices in connection with obtaining cosigners are sufficiently prevalent to warrant application of our remedial authority.

The Commission's authority to prohibit consumer deception in the marketplace is well established. The Commission and the courts have developed an extensive body of law concerning deceptive practices that proscribes misleading conduct. According to these well established principles, Section 5 is violated whenever a creditor misrepresents to a consumer facts that are material to the consumer's decision.[56]

In evaluating the meaning of a representation and its likely impact on a consumer, the Commission takes into account all of the circumstances surrounding the transaction.[57] Of course, the contract document itself contradicts misrepresentations concerning cosigner liability. As discussed above in the context of our finding that the failure to disclose liability is unfair, however, consumers quite reasonably do not read and understand the contract document.[58] In the face of affirmative misrepresentations, it is even less likely that consumers will read and understand the nature of the contract.[59]

A misrepresentation must also be material to violate Section 5.[60] A respresentation is material if it is likely to affect the consumer's conduct or decision.[61] Express representations, such as a statement that a cosigner is merely acting as a reference for the primary debtor, are presumed to be material, because the creditor's willingness to make the claim reflects a belief that consumers are interested in it.[62]

Moreover, as discussed above, the liabilities of cosigning are substantial, they can subject cosigners to financial and other hardships, including adverse credit ratings and legal process. Indeed, the nature of liability is a central element to the decision to cosign, a fact that strongly argues that misrepresentations of liability are material.[63] Further, many consumers are likely to choose differently when cosigner obligations are explained.[64] Express assertions by creditors that misrepresent the nature of this obligation, and therefore mislead consumers with respect to their potential liability, are clearly material.

In those instances in which misrepresentations of cosigner liability occur, there is clearly deception. The misrepresentations are express, and are likely to mislead consumers. There is injury because information concerning liability is material to the consumer's decision to cosign.

E. Remedial Requirements

Based on the record, we here enact a rule designed to remedy the unfair and deceptive practices discussed above.

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[51] Nondisclosure of material facts has been held to violate Section 5 in a wide variety of circumstances. *See All-State Industries, Inc.* v. *F.T.C.*, 423 F. 2d 423 (4th Cir.), *cert. denied*, 400 U.S. 828 (1970); *Alberty* v. *F.T.C.*, 182 F.2d 36 (D.C. Cir.), *cert. denied*, 340 U.S. 818 (1950); Statement of Basis and Purpose, Trade Regulation Rule, Labeling Advertising of Home Insulation ("R-Value"), 44 FR 50218 (1979), 16 CFR 460; Statement of Basis and Purpose, Trade Regulation Rule, Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 43 FR 59614 (1978), 16 CFR 38.

[52] *E.g.*, Nathaniel Hamilton, Colorado Rural Legal Services, Inc., describes an instance in which a finance company agent stated that all that the cosigners, elderly parents of the principal debtors, were signing were papers creating a corporation. R-II(1)-373. *See also* R-XI-AVCO-93; Joe Martin, 1st United Bancorporation, Tr. 1158; Jackson W. Guyton, Mutual Savings Credit Union, R-II(1)-80 at 3.

[53] Joshua M. Landish, Clark County Legal Services Program, Las Vegas, R-II(1)-398 at 4.

[54] Consumer complaint to Washington State Attorney General, R-XI-185-01.

[55] *See e.g.*, H. Robert Erwin, Jr., Legal Aid Bureau, Inc., Tr. 10025-27; Vincent Alfera, Summit County Legal Aid Society, Tr. 3653; Lloyd B. Snyder, Legal Aid Society of Cleveland, Tr. 2618; Ben T. Reyes, State Representative, Texas, Tr. 1660BB; Herbert L. Beskin, Charlottesville-Albemarle Legal Aid Society, Tr. 9007-08; John F. Robbert, Louisiana Consumers' League, Tr. 1988; Alison Steiner, Central Mississippi Legal Services, Tr. 1767.

[56] *See, e.g.*, *American Home Products Corp.*, 98 F.T.C. 136, 368 (1981), *aff'd*, 695 F.2d 681 (3rd Cir. 1982); *Sears, Roebuck & Co*, 95 F.T.C. 406 (1980), *aff'd*, 676 F.2d 385 (9th Cir. 1982); *National Commission on Egg Nutrition*, 88 F.T.C. 89 (1976), *enforced in part*, 570 F.2d 157 (7th Cir. 1977); *National Dynamics*, 82 F.T.C. 488 (1973), *aff'd*, 492 F.2d 1333 (2d Cir.); *Warner-Lambert*, 86 F.T.C. 1398 (1975), *aff'd*, 562 F.2d 749 (D.C. Cir. 1977), *cert. denied*, 435 U.S. 950 (1978).

[57] *See, e.g.*, *FTC* v. *Sterling Drug*, 317 F.2d 669, 674 (2d Cir. 1963); *Pfizer, Inc.*, 81 F.T.C. 23 (1972); *Beneficial Corp.* v. *FTC*, 542 F.2d (3rd Cir. 1976); *American Home Products, supra* note 56.

[58] *See supra* Section C.2.

[59] In *Peacock Buick*, the Commission disagreed with respondent's arguments that contract disclosures obviated the possibility of deception. The Commission noted, "It is clear from consumer testimony that oral deception was employed in some instances to cause consumers to ignore the warning in their sales agreement." *Peacock Buick*, 86 F.T.C. 1532, 1558-9 (1974).

[60] *FTC* v. *Algoma Lumber Co.*, 291 U.S. 67, 81 (1934); Statement of Basis and Purpose, Cigarette Advertising and Labeling Rule, 1965, 29 Fed. Reg. 8325 at 8351 (1954).

[61] American Home Products Corp., 98 F.T.C. 136, 368 (1981), *aff'd.*, 695 F.2d 681 (3d Cir. 1982); Statement of Basis and Purpose, Cigarette Advertising and Labeling Rule, 1965, 29 Fed. Reg. 8325 (1954).

[62] The Supreme Court has recognized this principle in commercial speech cases. *Central Hudson Gas & Electric Co.* v. *PSC*, 447 U.S. 557, 567 (1980).

[63] *Fedders*, 85 F.T.C. 38, 61 (1975), petition dismissed, 529 F.2d 1398 (2d Cir.), *cert denied*, 429 U.S. 818 (1976).

[64] *See supra* note 27.

The rule declares misrepresentation of the nature or extent of cosigner liability to be a deceptive practice, and the failure to disclose cosigner liability to be an unfair practice. To remedy the unfair practices shown on this record, we adopt a requirement that cosigners be informed, prior to becoming obligated on a loan, of the nature of their liability (§ 444.3(a)(2) of the rule). To stem the deceptive practices demonstrated by the record, we impose a direct prohibition on misrepresentations of the nature or extent of cosigner liability (§ 444.3(a)(1) of the rule), and provide that compliance with the preventive requirement is sufficient to avoid charges that a creditor has engaged in misrepresentations in violation of the rule. To prevent both the unfair and deceptive cosigner practices, we require that a disclosure notice, the text of which is set out in § 444.3(b), be given to potential cosigners.

This scheme of remedial provisions is clearly within the Commission's authority. Section 18(a)(1)(B) provides that Commission rules "may include requirements prescribed for the purpose of preventing" acts or practices declared unfair or deceptive.[65] It is well established that the remedies selected by the Commission to cure the unfair or deceptive cosigner practices must bear a "reasonable relationship" to the practices demonstrated on the record. In *Jacob Siegel Co.* v. *FTC*,[66] the Supreme Court set forth the standard for review of remedial provisions of Commission adjudicative orders: "[T]he courts will not interfere except where the remedy selected has no reasonable relationship to the unlawful practices found to exist." The Supreme Court has reaffirmed the Commission's remedial discretion in adjudicative proceedings.[67]

The disclosure notice mandated by rule § 444.3(b) is intended to remedy the unfair and deceptive practices shown on the record by providing the potential cosigner with basic information about the nature and extent of cosigner liability. The notice is couched in general terms sufficient to alert consumers to the essential elements of cosigner status. Language such as "guarantee this debt" and "accept this responsibility" serves to make it clear that to be cosigner involves more than merely vouching for the primary debtor or serving as a reference. Language such as "full amount" and "fees or * * * costs which increase this amount" will make cosigners aware of the magnitude of the potential financial exposure they undertake. Language such as "same collection methods" and "*your* credit record" will alert the consumer to some of the additional potential consequences of cosigning a loan. Thus, this simple summary of the nature and extent of a consigner's potential liability addresses the unfair practices of failing to disclose such information, as well as the deceptive practice of misrepresentation of the role of a cosigner.

Indeed, commenters endorsed the disclosure notice as necessary to remedy cosigners' lack of awareness of their liability and creditor misrepresentation of the nature of cosigner obligations.[68]

F. Alternatives Considered and Modifications Adopted

Because cosigners can be important in making credit available to consumers without a well established credit record, the rule as proposed did not ban their use. Instead, the rule originally proposed by the Commission would have imposed the following requirements:

1. Potential cosigners must be given a plain language explanation of their obligation.

2. Potential cosigners must be given a three day cooling-off period before they obligate themselves.

3. Cosigners must be given copies of all documents they sign or that are given to the principal debtor.

4. The contract obligating the cosigner must provide that:

a. The creditor must employ "due diligence" in attempting to collect from the principal debtor before seeking payment from the cosigner.

b. The cosigner's liability is limited to the total of payments owed by the principal debtor at the time the cosigner becomes obligated.

c. The cosigner must be promptly notified of any default by the principal debtor.

During the preceeding, creditors emphasized the importance of cosigners in making credit available to inexperienced borrowers.[69] They argued that the rule provision would reduce the availability of credit to such borrowers if it made the use of cosigners costly or inconvenient. There was relatively little opposition to the concept of informing cosigners of their obligation.[70] There was strong opposition to the three day cooling-off period on the ground that it would cause serious inconvenience in making cosigner loans.[71] Creditors also objected to the "due diligence" requirement, primarily on the ground that the term was ambiguous.[72]

Various objections were registered to the cosigner provision's application to open-end credit.[73] These concerns are addressed by providing that in open end transactions the disclosure notice be supplied only at the time of the initial extension of credit.[74] We have adopted modifications in that portion of the cosigner rule that we promulgate today to reach other concerns raised during the proceeding, such as paperwork burden.

The Final Rule

Although the record before us documents certain problems in connection with the use of cosigners, and although the Staff Report

[65] 15 U.S.C. 57a(a)(1)(B).

[66] 327 U.S. 608, 613 (1946).

[67] *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952); *FTC v. National Lead Co.*, 352 U.S. 419, 428–30 (1956).

[68] Post-record comment summary at 153; 163, notes 44–45.

[69] *E.g.*, D. L. Aldridge, Louisiana Independent Finance Association, R-II(1)-253; John A. Allgair, Jr., Manager, USARAL Federal Credit Union, Ft. Richardson, Alaska, R-II(1)-316; F. H. Hamilton, Jr. President, People's Bank of Indianola, R-II(1)-397; Joe Martin, 1st United Bancorporation, Tr. 1165.

[70] *E.g.*, D. L. Aldridge, Louisiana Independent Finance Association, R-II(1)-253; Northrup Credit Union, Hawthorne, California, R-II(1)-342.

[71] Indeed, most objection to the proposed provision focused on the three day cooling-off requirement. *E.g.*, Paul H. Camerlengo, 1st City National Bank of Houston, R-I(a)-502; Ralph France, Bank of New Orleaand, R-I(a)-197; Helmut Schmidt, Transamerica Financial Corp., Tr. 6201; Alfred J. Lapan, South Middlesex Bank and Mass. Coop. Bank League, Tr. 11450; Gordon Wear, Texas Independent Automobile Dealer's Association, Tr. 715; James Goldberg, American Retail Federation, Tr. 6124; Richard C. Durham, Association Puertorriqueña de Financieras Consumidor, R-I(a)-332; H.E. Smith, Alabama Lenders Association, R-I(a)-383; Larry G. Cardell, Sr., Merchant's National Bank of Allentown, Pa., R-II(1)-249. *See also*, Staff Report at 465; Presiding Officer's Report 225–228.

[72] Gene L. Jamerson, 1st International Bancshares, Texas, R-II(a)-17; Melvin Struthers, Morris Plan of Iowa, R-II(a)-678; J. G. Turner, U.S. National Bank of Oregon, R-II(a)-10; Alan M. Black, Pennsylvania, R-II(b)-107; Jay Buele, Northern Trust Co., Illinois, R-II(a)-27; W. A. Browning, 1st National Bank of Boulder, Colorado, R-II(f)-172; R. C. Smith, Georgia Bank and Trust Co., R-II(f)-178; John Ross, Third National Bank of Ashland, Texas, R-I(a)-521; David Wood, Dial Financial Corp., Tr. 4705; Clare A. Rollwagen, Minnesota Consumer Finance Conference, Tr. 3940; Jack W. Woodburn, Cleveland Trust, Ohio, R-II(1)-301; Marshall M. Taylor, Lillick, McHose and Charles, Attorneys, Los Angeles, R-II(1)-182. Some creditors also argued that the due diligence requirement was substantively too restrictive. *See* Staff Report at 472.

[73] Post record comment summary at 166–167 notes 55, 57–58.

[74] D. Dale Browning, Senior Vice President, Rocky Mountain B.A.C. Corp. (BankAmericard), R-II(1)-243; Michigan National Bank, Lansing, R-II(1)-271; Holland and Hart, Attorneys, Denver, Colorado, R-II(1)-348; Larry C. Ross, Assistant Counsel, Vickers Petroleum Corp., Wichita, Kansas, R-II(1)-442; Ronald J. Green, American Express, R-I(a)-601; William T. Gwennap, American Bankers Association, Tr. 12222; Ely Kuchel, National Retail Merchants Association, Tr. 8341; Carl Felsenfeld, Citicorp, New York, R-II(c)-74; C. Lee Peeler, Washington, D.C., R-II(1)-403. *But see* Ernest D. Stein, Bank Vice President, R-II(1)-434.

recommended a number of modifications in the rule provision initially proposed by the Commission, we are not persuaded that the benefits of those proposals offset their probable costs.[75] The rule we adopt today, providing a cosigner disclosure, will go a long way toward remedying not only the major problem reflected on the record—lack of consumer awareness of the full significance of becoming a cosigner—but also some of the ancillary problems that are, to a large degree, also a function of cosigner awareness.

The rule corrects the problems of cosigner lack of information by requiring that a notice be provided alerting the consumer to the obligations and consequences of cosigning. A disclosure requirement received support from creditors [76] as well as consumer representatives.[77] Robert P. Shay stated that:

"* * * the high incidence of payment being demanded (from cosigners) lends support to those who would urge some form of disclosure * * *" (HX-494 at 60).

It is also supported by the Presiding Officer who concluded:

"The record of this proceeding supports a requirement that cosigners in consumer credit transactions should be provided by the creditor with a clear and succinct statement of their potential liability." [78]

Compliance

This rule does not require that the creditor personally give the notice to the cosigner, but only that it "be given" to the cosigner. Therefore, if the creditor would not otherwise have personal contact with the cosigner, the rule will not require such contact. The creditor can provide the notice through the borrower or by other means such as the mail. However, the creditor is obligated by the rule to assure that the cosigner does *in fact* receive the notice prior to becoming obligated. If the creditor asks the borrower to give the notice to the cosigner and the borrower does not do so, the creditor will be in violation of the rule. Each creditor may adopt procedures of its own choosing for assuring that the notice is actually received.

The rule specifically requires that the notice be provided in a separate document. The purpose of this requirement is to assure that the cosigner will actually be aware of the notice before becoming obligated. Thus, the notice document cannot be affixed to other documents unless the notice document appears before any other document in a package, and it may not include any other statements, with one exception. Several states already require special notices to cosigners.[79] Those states may apply for an exemption under § 444.5 of the rule. However, if a state does not apply, or if an exception is not granted, a creditor can still avoid having to provide two separate documents by putting both notices in one, unless the state law forbids it.

Although this is not specifically addressed in the text of the rule, the Commission intends that the notice document may also contain the creditor's letterhead. The information on the letterhead would not distract the cosigner from the notice and, because the notice may very often be the only document retained by the cosigner, such information might prove helpful at a later time. Similarly, if a creditor chooses to assure cosigners obtain the disclosure documents by requesting a signed acknowledgement, the notice document may include a signature line.

We also note that the cosigner disclosure should be provided in the same language as that in which the underlying loan contract is written. Although this issue is not specifically addressed by the rule itself, failure to provide such same-language disclosures could constitute a separate violation of Section 5.

Open End Credit

Witnesses objected to the cosigner provision in open end credit transactions. They argued that the rule would require a notice upon each extension of credit pursuant to an open end account, making overdraft checking impossible and other forms of open end accounts complicated to administer.[80] The rule we promulgate today has been revised to make it clear that a notice need not be used every time a consumer draws on an open end line of credit.

-For open end accounts, the cosigner need only be given a single notice at the time that the account is opened. The specific language required by § 444.3(b) of the rule has been modified so that it applies when the cosigner is guaranteeing an open end account and may be liable for an amount less than or equal to the line of credit extended.

Definition of Cosigner

Several creditors stated the rule can be evaded by requiring potential cosigners to become co-applicants for credit.[81] We incorporate in the final rule a revision which defines as a cosigner any person whose signature is obtained after the initial applicant is told that the signature of another person is necessary. Creditors should not seek to evade the rule by designating cosigners as co-applicants.

It was thought by some that the definition of cosigner was so broad as to include the principal debtor or an authorized user of a credit card.[82] Recommendations were also made that "compensation" be defined,[83] or that consideration[84] or some other term[85] be used in the definition. Substitution of the term "accommodation party" for cosigner was recommended, as was revising the definition to make it explicit that one who signs in order that another may receive the benefit of the goods or money is a cosigner.[86] It was also suggested that the definition does not make clear whether a person who hypothecates security of a passbook on a loan but does not personally guarantee the loan is a cosigner for the purposes of

[75] *See* discussion of rejected provisions in Chapter XII.

[76] *E.g.*, Leslie R. Butler, Consumer Bankers Association and First Pennsylvania Bank, Tr. 11582; Vernon Lemons, Jr., Texas Finance Institute, Tr. 1022; Carl W. Berg, American Marine Bank, Wa., R-II(d)-83; Lucy Caldwell, Ferro Nashville Employees Credit Union, R-II(d)-25; Don E. Wolf, York Bank and Trust Co., Pennsylvania, R-II(b)-104; T. J. Ryan, Albuquerque Bell Federal Credit Union, R-II(d)-5.

[77] *E.g.*, Robert H. Erwin, Legal Aid of Baltimore, Tr. 10028; Gayle C. Williams, Legal Aid Society of St. Louis, Tr. 4612; Pamela Piering, C.A.M.P. Consumer Action Project, Wa., Tr. 6877; Charles Hammond, Arlington County Dept. of Consumer Affairs, Virginia, R-II(b)-128; Lewis Taffer, Alliance for Consumer Progress, Pennsylvania, R-II(H)-1; Ronald A. Gall, Wisconsin Consumers League, Tr. 3976; James L. Sullivan, Director, Department of Consumer Affairs, Missouri, Tr. 4581.

[78] Presiding Officer's Report at p. 285.

[79] *E.g.*, Section 422.305 Wisc. Stat. *See also* R-XIII-31 at C-28.

[80] *See supra* note 74.

[81] Paul H. Camerlengo, First City National Bank of Houston, R-II(1)-236; Michael Brown, United Auto Dealers Association, Chicago, Tr. 2768-2769.

[82] Technical comments by the staff of the Board of Governors of the Federal Reserve Board, HX 451 at 16; William B. Johnson, Sun Oil Company, R-II(1)-466; Russell A. Freeman, Security Pacific Corp., Los Angeles, R-II(1)-339; James Goldbert, American Retail Federation, Tr. 8123.

[83] Technical comments by the staff of the Board of Governors of the Federal Reserve Bank, HX 451 at 18; Frederick T. Berhenke, Administrator Colorado U.C.C.C., HX 251 at 7; Thomas Crandall, Gonzaga University Law School, Wa., Tr. 10672-73; Bryce A. Baggett, Oklahoma Consumer Finance Association, Tr. 850.

[84] George H. Braasch, Chairman, Subcommittee of the Committee on the Regulation of Consumer Credit—Section of Corporation, Banking and Business Law of the American Bar Association, R-II(1)-325; David H. Pohl, Capital Financial Services, Ohio, R-I(a)-541.

[85] T. McLean Griffin, First National Bank of Boston, R-II(d)-54 would define cosigner as "a natural person who without compensation and without an opportunity to obtain credit under the obligation, * * *."

[86] John P. Winston and Walter E. Hulzenga, National Automobile Dealers Association, R-I(a)-551; Lois J. Wood, Land of Lincoln Legal Assistance Foundation, R-I(c)-361.

the rule.[87] One commenter thought that the definition should be modified by the addition of the phrase "whether or not that person is specifically designated on the contract as being a cosigner." [88] Another felt that cosigner should be redefined as one who renders himself "secondarily" liable for the obligation of another.[89]

We have adopted definitional revisions which accommodate these suggestions. The phrase "another person" will avoid confusion between a cosigner and a principal debtor. Clarifying language has been added defining a cosigner as one who enables a consumer to receive goods, services or money, but does not receive such goods, services or money himself.

We reject the recommendation that "consideration" be substituted for "compensation" since applicable cases hold that cosigner agreements are supported by consideration.[90] The use of the term consideration thus would not serve the purpose intended.

We have added language which makes it clear that a person is a "cosigner" under this rule, whatever he or she is called by a creditor, if he or she meets the definition in the rule.[91]

Modifications to Required Notice

The proposed rule requires use of a notice advising cosigners of their liability. The industry asserted that the originally proposed notice was too long, unclear, inconsistent with state and federal law, inconsistent with cosigner's rights under other parts of the rule, inapplicable to openend credit, and unnecessarily time consuming because of all the blanks to be filled in.[92] Some commenters felt that other information, especially the fact that the cosigner is being asked to take a risk which the creditor is unwilling to take, should be included in the notice.[93] We have adopted revisions as set out below to meet some of these concerns.

The notice as originally proposed had eight blanks which the creditor would be required to complete. The revised form has none. It is substantially shorter. The detailed recitation of remedies which a creditor could employ against the cosigner has been eliminated since some remedies are not available in all states.

The reference to the contract evidencing the obligation in the final paragraph has been amended to make it clear that it is the contract, and not the notice, which defines the cosigner's obligation.

Finally, Commission action in deleting the non-disclosure portions of the rule removes the possibility of a direct, albeit minor, conflict with certain state laws. A number of states already require informational notices to cosigners whose wording differs from the cosigner notice required by the rule. Because the state notices describe cosigners' obligations under existing law, they might no longer have been strictly accurate if the Commission adopted the parts of the proposed rule which would have substantively altered cosigner obligations.

X. Analysis or Projected Costs, Benefits, and Effects of the Rule

As set forth earlier, the Rule comprises six major components—four contract clauses that are prohibited, one accounting practice that is prohibited, and an affirmative disclosure requirement. Each of these elements is, to a certain extent, segregable from the whole for the purposes of analyzing projected costs, benefits, and effects of the rule.

However, many of the projected costs and, to a lesser extent, benefits of the rule may not be readily segregable, and therefore are more appropriately attributable to the rule as a whole, rather than to any particular element of the rule. These benefits and costs are likely to arise from the impact on the market of the entire rule, rather than from the impact of any one element.

The costs and benefits attributable to the individual provisions of the rule are discussed in Chapters IV–IX, *supra*. The costs and benefits of the interrelated parts of the rule as a whole are discussed here.

A. Costs

Most commenters who opposed the rule argued that it would increase credit costs by either increasing the price of credit (because consumers would demand more of a more attractive product and creditors would supply less of it) and/or decreasing the availability of credit, especially for the marginal risks (because of stricter screening of credit applicants). These commenters stated that such increases in costs to creditors would outweigh whatever benefits consumers and competition might obtain from the rule. The record for the proceeding establishes, however, that the rule will not have a major impact on either the price or availability of credit.

1. Econometric Studies

Comprehensive econometric analyses of creditor remedies, interest rates, and amount of credit extended were prepared for the rulemaking record. The results of these studies were consistent with the experience in the states, described below.

The first study was a detailed and thorough examination of the theoretical economic implications of the rule and the empirical work carried out by the National Commission on Consumer Finance that evaluated these implications with reference to the existing consumer credit market.[1] This study defined the economic issues raised by the rule, evaluated the empirical work that predated it, defined a microeconomic model of the consumer credit market, and suggested further empirical work in the area to answer the fundamental questions about the effects of restrictions on creditors' remedies on credit cost and availability.

The report contains a variety of important conclusions based on an examination of the data bases compiled by the technical staff of the National Commission on Consumer Finance. It found, for example, that there is no significant relationship between interest rate ceilings and rejection rates. It also found no significant relationship between prohibition of creditor remedies and rejection rates.[2] In short,

[87] Jack W. Woodburn, Cleveland Trust, Ohio, R–II(1)–361.

[88] Lois J. Wood, Land of Lincoln Legal Assistance Foundation, R–II(1)–438.

[89] Betty Gregg, Credit Union National Association, Tr. 9674.

[90] *E.g., Zimmerman Ford, Inc. v. Cheney*, 271 N.E. 2d 682 (Ill. App. 1971).

[91] Experience from Illinois, which has a cosigner statute, shows that enforcement has been prevented by disputes over the status of alleged cosigners, where creditors style cosigners as co-applicants. Lois J. Wood, R–II(a)–393.

[92] David J. Tarpley, Legal Services of Nashville and Middle Tennessee, Inc., Tr. 3670; Leslie R. Butler, Consumer Bankers Association and 1st Pennsylvania Bank, Tr. 11582; Colin K. Kaufman, Harvard Law School, Cambridge, Mass., R–II(f)–309, R–II(l)–364; Fred K. Harvey, Georgia Industrial Loan Association, Tr. 4470; James C. Barr, National Association of Federal Credit Unions, Washington, D.C., R–II(l)–337; T.J. Hughes, Navy Federal Credit Union, Washington, D.C., R–II(l)–394; Russell A. Freeman, Security Pacific Corp., Los Angeles, Ca., R–II(l)–339; Jack W. Woodburn, Cleveland Trust, Ohio, R–II(l)–361; Robert W. Fox, Atlantic Federal Savings and Loan Association, Florida, R–II(a)–1; William T. Gwennap, American Bankers Association, Tr. 12222; T.J. Ryan, Albuquerque Bell Federal Credit Union, R–II(d)–5.

[93] A.B. Calvin, Dyche, Wright, Sullivan, Bailey and King, Tx., R–II(l)–263; Charles W. Noble, Metropolitan National Bank, Tx., R–II(l)–232; David K. Krump, Grant County State Bank, Ulysses, Kansas, R–II(l)–139.

[1] The results are found in R–XI–10, *Federal Trade Commission Proposals for Credit Contract Regulations and the Availability of Consumer Credit*, Michael Aho, James Barth, Joseph Cardes, Anthony Yezer, Daniel Brumbaugh (May 20, 1978).

[2] R–XI–10 at 90–93. These data were drawn from finance company loans in 47 states. The sample included Arkansas, which had a uniquely low

Continued

there appeared to be no significant correlation between permissible creditor remedies and creditor willingness to extend credit to consumers.

In a second study,[3] Professors Barth and Yezer developed a simultaneous econometric model for the consumer credit market. This model relies on individual, discreet loan transactions. Having developed the model, Barth and Yezer ran three series of regressions using data obtained from FTC investigations and data obtained from the National Consumer Finance Association.

Early problems with compiling an accurate table of state laws [4] were eliminated in later versions of the study, which were presented in hearings on the rule.[5] Using different data bases after problems with the state law data were eliminated, Barth and Yezer achieved consistent results. During the hearings, the NCFA introduced a large data base covering thousands of recent consumer loans. Barth and Yezer ran a final version of their study using this data base.[6]

In their final study, Professors Barth and Yezer concluded that the percentage point estimate for the rule's effect is a 19/100's of 1 percent (0.192%) increase in credit costs. Even this estimate may be too high because it compares a hypothetical laissez-faire state having *no* remedy restrictions with the same state having nearly all of the originally proposed restrictions. As noted, we have determined not to adopt several of the original staff recommendations, and we have significantly modified and refined several of those which we do adopt.

Although the specific point estimates with respect to the impact of the rule on credit cost should be viewed as indicating a range or order of magnitude and not a precise estimate, the Barth-Yezer studies demonstrate that the impact of the rule on credit cost will be "clearly negligible."[7]

During the course of this proceeding, the econometric studies—in particular the Barth-Yezer studies[8]—were the subject of considerable scrutiny and critical analysis.[9] The Commission looked closely at the overall economic evidence, and focused on the Barth-Yezer work, during our final deliberations on the rule.[10] We are cognizant of the limitations of the econometric studies. The studies represent, however, the most sophisticated analyses available on the record.[11]

We have given careful consideration to the econometric evidence assembled on this record, particularly the latter studies of Professors Barth and Yezer. Our review has led us to consider that the econometric evidence does not, of itself, permit a definitive finding concerning the net costs or benefits of the rule as a whole. The relatively small magnitude of effects indicated by the econometric evidence does permit us to be reasonably certain that the effect of the rule will not be unduly large in either direction. Our conclusion in this regard has led us to look more closely at the other available evidence on the rule as a whole and as to each provision.

2. Experience in the States

There exists a large body of experience with restrictions on creditor remedies in consumer transactions. Most states already have laws similar to one or more of the provisions of the rule. During the rulemaking proceeding, three states were identified that have legal regimes comparable to (or stricter than) the rule as it was then proposed.[12]

State experience was examined intensely during the rulemaking proceedings. Statistics on credit markets in different states were submitted by NCFA, state regulators, and other sources. Comparisons were made between market conditions in states with laws similar to the proposed rule and other states.[13] Although there is some state to state variation, these comparisons reveal no systematic differences between states that have restricted remedies and the other states. Interest rates in reform states tend to be lower than in representative states that do not restrict remedies covered by the rule.[14] Borrower income and default rates were lower in reform states than in non-reform states, while borrower debt levels tend to be higher. Overall, there are no apparent negative impacts on cost where credit reform laws have been enacted.

Another source of information on state experience is comments and testimony by state regulators, creditors, and other persons from states that have adopted laws similar to the rule. In some instances these individuals accompanied their testimony with statistics, for example, on market conditions before and after a credit reform law took effect.[15] Although occasional negative effects were noted,[16] the consensus was that the state reform laws had not interfered with creditors' business.[17] No significant

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interest rate ceiling. The study eliminated Arkansas from its computations because there are no finance companies in the state. The NCCF simply postulated a 100 percent rejection rate for the state. No one disputed the effects of Arkansas' 10 percent rate ceiling on consumer loans. This ceiling was an aberration and was raised to 24 percent by the voters of Arkansas in 1982.

[3] The results are found in R-XI-161, *The Economic Impact of the Federal Trade Commission Proposals for Credit Contract Regulations on the Cost and Availability of Consumer Credit* (March 31, 1977). The studies excluded evaluation of waivers of exemption and cosigner provisions.

[4] An evaluation of state laws is essential for developing creditor remedy variables. Thus, the empirical results reported in R-XI-161 are invalid. The later results, using accurate state law data, are found at HX-505 (FTC data) and R-XIII-39 (NCFA data).

[5] *See* HX-505.

[6] R-XIII-39.

[7] R-XII-39 at 7. Examination of the Barth/Yezer regressions using FTC and NCFA data reveals that the impact of individual provisions of the rule on credit cost is not significantly different from zero. Barth and Yezer consider that all the remedy variables must be viewed together, and that the study demonstrates that individual remedies cannot be evaluated except as a group.

[8] *See supra* notes 5–6.

[9] *See, e.g.*, NCFA Comments, R-XV-343 at 54–56; *see also* memorandum of April 4, 1983 from Timothy J. Muris, Director, Bureau of Consumer Protection, at 18–24; memoranda of the Bureau of Economics, April 5 and 7, 1983.

[10] Professors Barth and Yezer made oral presentations before the Commission and were questioned by the Commissioners. *See* "Oral Presentations by Public Representatives", June 6, 1983, Tr. 91–121.

[11] *See, e.g.*, Muris memorandum, *supra* note 9 at 24, *citing* Staff Report at 527–39.

[12] Wisconsin, Iowa and Connecticut. Because the final rule has deleted a significant number of the initial proposals, a larger number of states could now be said to have existing restrictions similar to the final rule.

[13] See especially Staff Report at 525. *See also* Staff Report at 546 note 177, and 517; R-XIII-30 (state by state breakdown of NCFA survey data). Most of these comparisons used NCFA data on finance company loans. Finance company loans are the market segment where adverse effects of the rule would be most apparent because finance companies deal with higher risk borrowers and make greater use of these remedies than do other creditors.

[14] *See* "Comparison of Precomputed Loan Account Characteristics, Selected States", Staff Report at 525.

[15] Testimony by these witnesses is summarized in detail in the Staff Report at 501–522.

[16] *E.g.*, Clarence P. Bleser, Wisconsin Finance Corp., Tr. 3481–83 (*but see* Robert P. Shay, HX-494 at 24); Thomas H. Huston, Iowa Banking Dept., Tr. 2289–91 (reports small increase in collection cost primarily attributable to an Iowa law provision not contained in rule). *See also* discussion of Credit Research Center Studies of Wisconsin Consumer Act in Staff Report at 544–546.

[17] *E.g.*, Richard A. Victor, Wisconsin Department of Justice, Tr. 4016–17; Robert A. Patrick, Office of Wisconsin Commissioner of Banking, Tr. 4037–38, 4044, R-I(d)-109 at 1; Tucker K. Trautman, Colorado Dept. of Law, HX-252 at 3; Edward J. Heiser, Jr., Wisconsin Consumer Finance Ass'n, Tr. 3447; James L. Brown, University of Wisconsin, HX-153 at 1–3; Robert C. Focht, Connecticut Banking Dept., Tr. 11252; Diane Cadrain, Connecticut Citizen Research Group, Tr. 10805; Kathleen Keest, Blackhawk County Legal Aid Society, Tr. 4267. *See also* Presiding Officer's Report at 340.

effect on the cost or availability of credit was reported.[18] Creditors, for example, testified that they lent to the same type of consumers and applied the same credit standards after reform laws were passed as before.[19] Other testimony from the three "laboratory" states was consistent with these observations.

3. Other Evidence on Effects on Costs

The record also contains extensive evidence on the value of individual remedies to creditors. From this evidence we have drawn general inferences concerning the cost to creditors (and thus ultimately to consumers) of banning remedies. All of the remedies addressed by the rule are ones whose importance to creditors is limited.[20] Evidence on the value of each remedy covered by the rule is reviewed in the respective chapter on individual rule provisions.[21] Some examples will illustrate the types of information on which our conclusions are based.

Several important types of evidence on value of remedies relate to all rule provisions. Evidence on causes of default, discussed in Chapter III above, is one example. Another is survey evidence on the importance of various collection methods to creditors.[22] The most important remedies—garnishment, repossession, acceleration of the debt, suit, and direct contacts with debtors—are not restricted by the rule.

The evidence establishing the limited value of the remedies covered by the rule helps to explain the finding that state laws restricting remedies have not had significant disruptive effects on credit markets. It also provides an independent reason for concluding that the rule also will not have such effects.

B. Benefits

A key issue throughout the rulemaking proceeding has been whether the benefits received by consumers from restricting one or more of these remedies would offset any decrease in credit availability or increase in credit costs that may result. Although many of the benefits of the rule are properly addressed in the context of the individual provisions, a general overview can be made.

Because default is largely beyond the debtor's control, the benefits of the proposed restrictions would be potentially available to any consumer. No one is so free from the possibility of loss of employment, large medical expenses, marital discord, etc., that the rule might never provide benefit. The benefits to all consumers can thus be analogized to insurance, in some respects.[23]

Many of the rule's benefits are difficult to evaluate monetarily, such as: procedural due process protections; the opportunity to assert valid claims and defenses; less economic distress and disruption of family finances; less embarrassment, humiliation, and anxiety; less interference in employment relations; retaining personal possessions and household goods; protection against coerced settlements; and well informed cosigners. Nonetheless, consumers place a value on such benefits (*e.g.*, less emotional distress). Their willingness to pay for contracts that reduce these possibilities is the measure of these benfits.[24]

Other benefits are more susceptible to an estimate of monetary value for individual consumers. These benefits include: fewer costly refinancings; less loss of equity in property; goods remaining in the hands of the party who values them more highly; and fewer additional delinquencies "triggered" by one creditor filing a wage assignment.

C. Summary

In assessing the costs and benefits of this rule, the Commission must be guided by ranges and magnitudes and not precise dollar estimates. There is no means available to prepare precise, dollar point estimates of the costs and benefits of curtailment of creditors' remedies. This is because these costs and benefits are small, when factored into any precise empirical model that endeavors to define the array of factors which influence credit extension decisions. Moreover, the rule does not affect the most valuable creditor remedies, including garnishment, self-help repossession, direct debtor contacts and the like. Nor does our final rule address several creditor remedies encompassed in the original proposal (and upon which all aggregate impact assessments are based), *e.g.*, deficiencies, attorneys' fees, etc.

Although any restrictions on creditor remedies have cost implications, factors other than these six remedies predominantly determine costs and availability. The most important factors are: (1) The cost of money to the creditor, (2) the consumer's present income, existing debt level, and capacity to incur further debt, (3) the possibility of the consumer being a repeat customer, (4) the creditor's opportunity costs, (5) the applicable interest rate ceilings, (6) the availability of other fees and charges, (7) the availability of the most useful creditor remedies, (8) the principal amount of the loan, etc. Aggregate economic conditions have an effect as well. Thus, any assessment of the rule's potential effects on credit costs or availability must start from a position that the remedies involved have little effect relative to the major determinants of cost and supply. Although this is not, in itself, evidence of the net effect of the rule, it does provide a context for assessing the expected impact of individual rule provisions, discussed in relevant chapters above.

The benefits of this rule also cannot be quantified precisely. At issue is the treatment of borrowers and their families when serious financial problems occur. The record contains extensive evidence that the specific remedies at issue here are a direct cause of substantial consumer injury, that consumers cannot reasonably avoid such injury, and that the injury is not offset by other benefits, either to consumers or to competition. The record contains evidence of the use of challenged remedies and the effect of such use on consumers and their families. Much of this evidence is quantitative in nature.

XI. Impact on Small Business

In the course of this proceeding certain creditors argued that the rule will injure small businesses.[1] Our review

[18] *Id.*

[19] *E.g.*, Clarence P. Bleser, Wisconsin Finance Corp., Tr. 3481–, 3491–92; Thomas H. Huston, Iowa Banking Dept., Tr. 2289–90.

[20] Throughout this proceeding, the rule has been revised, modified, and otherwise narrowed to leave intact those remedies demonstrated to be of greatest value to creditors. The original April 19, 1974, staff memorandum recommending the rule excluded self-help repossession from the proposal in part because of its importance to creditors. During the proceeding the staff recommended revisions in the rule so as not to interfere with non-household goods security interests and non-pyramided late fees and extension charges. See Staff Report at 244–245 and 364–366. We have further narrowed the household goods provision. Finally, we deleted provisions covering third-party contacts, deficiencies, attorneys' fees, cross-collateral clauses, and substantive regulation of cosigners.

[21] *See* the chapter subsections on "Offsetting benefits."

[22] *See* Staff Report at 494–495 discussing National Commission on Consumer Finance survey results.

[23] *See supra* Chapter II.

[24] In their second economic study for this proceeding, Professors Barth and Yezer assessed the rule's potential benefits by calculating consumers' willingness to pay higher rates for contracts with fewer creditor remedies. The study concluded that consumers were willing to pay up to an additional 7.18 percent APR for more favorable contract terms. This study was based on FTC-supplied data, an admittedly unsound data base. The last study, using NCFA supplied data, did not estimate consumers' willingness to pay. No other evidence measured this factor.

[1] *See, e.g.*, Thomas Rothwell, National Small Business Association, HX–430; Leonard M. Cohen, Independent Finance Association of Illinois, Tr.

Continued

of the record reveals no disproportionate impact on small business from federal or state credit reforms. To the contrary, Federal Reserve Board data compiled by the NCFA show that the number of small finance companies grew from 1970 to 1975, notwithstanding increasing competition from banks and credit unions, the Supreme Court's decisions in *Fuentes v. Shevin*[2] and *Sniadach v. Family Finance Corporation*,[3] and passage of the Consumer Credit Protection Act of 1967 (which includes, as amended, Truth in Lending, Equal Credit Opportunity, Fair Credit Reporting, and other credit reforms).[4]

More specifically, with respect to this rule the record contains evidence that many small creditors need to rely less on the contractual provisions and non-contractual practices addressed by the rule than large multi-office firms. Several operators of one and two office finance companies testified on their strong community ties, histories of courteous personal service to successive generations of related customers, and effective "notice and phone call" collection programs.[5] Thus, small finance companies tend to rely less on the practices addressed in the final rule.

On the other hand, major national finance chains have high turnover rates in office personnel, uniform procedures for handling minor delinquencies and serious defaults, and generally deal with their customers on a less personal basis than small independents.[6] The more personalized approach to collections that is possible for smaller creditors in many cases can serve as an effective substitute for formal remedies.

The National Commission on Consumer Finance survey results suggest that smaller banks and single-state retailers and finance companies tend to be less dependent upon many of the contractual provisions and practices affected by the rule than larger firms.[7]

While there has been a long-term declining trend in the role of small finance companies this trend is attributable to causes other than regulations on creditor remedies.[8] The record, taken as a whole, does not indicate that the rule will have a disproportionate effect on smaller creditors.

XII. Relation Between The Rule and State Law

The rule has been drafted to be as consistent with existing state laws as possible. Indeed, state laws served as the model for several rule provisions. The rule prohibits practices that are authorized by statute or common law in at least some states. However, none of the rule provisions *preempts* state law by creating an irreconcilable conflict. That is, creditors will be able to comply with both state law and this rule.[1]

Under the law governing preemption, state legislation that imposes requirements not inconsistent with the rule will remain in effect, whether or not states seek exemption. Therefore, where state regulation is more stringent than the rule, compliance with the rule will not immunize creditors from state

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2477; Robert E. Dean, Security Mutual Finance Corp., Tr. 161; William Leyhe, Consumer Loan Co., Tr. 4361; Gary Finn, Summit Federal Credit Union, R-I(a)-17; George Jones, Louisiana Independent Tire Dealers Association, R-I(a)-288; G. C. Backhaus, Post Finance Company, R-I(a)-793; Richard Warren, Alabama Lenders Association, R-I(a)-361.

[2] 407 U.S. 67 (1972).

[3] 395 U.S. 337 (1969).

[4] Revelant data are summarized in the following table:

NUMBER OF FINANCE COMPANIES BY SIZE, JUNE 30, 1960, 1965, 1970, AND 1975

	1960	1965	1970	1975
Companies having short- and intermediate-term credit outstanding of:				
Under $100,000	2,124	1,199	826	863
$100,000 to $499,999	2,770	1,771	1,085	1,204
$500,000 to $999,999	652	535	424	415
$1,000,000 to $4,999,999	631	498	399	500
$5,000,000 to $24,999,999	175	164	112	204
$25,000,000 to $99,999,999	45	82	77	103
$100,000,000 and over	27	44	58	88
Total	6,424	4,293	2,961	3,376

Source: National Consumer Finance Association, *Finance Facts Yearbook* (1978 ed.) at 52.

The distribution of the number of finance companies by dollar amounts outstanding in the years 1960, 1965, 1970 and 1975 indicates sharp decreases in the number of very small firms (less than $1 million in outstanding) from 1960 through 1970, followed by a 7 percent increase in their total number during 1970-75—the time period in which the most significant federal and state consumer credit reforms took effect (Truth in Lending became effective in the second half of 1969). While the number of firms in the $500,000-$999,000 category decreased slightly from 424 in 1970 to 415 in 1975, this may mask upward movement in individual firms' total outstandings because the $1,000,000-$4,999,999 category grew from 399 to 500 firms in this period.

The total number of finance companies increased from 2,961 in 1970 to 3,376 in 1975. Of these 3,376 firms, the top 88 (outstandings of $100 million and over) operated 18,899 offices, an average of 215 offices per firm. The remaining 7,985 offices in the total industry were distributed among 3,288 firms with outstandings under $100 million, an average 2.4 offices per firm. National Consumer Finance Association, *Finance Facts Yearbook* (1978 ed.) at 52. At this level, many of the firms with 5,000,000-24,999,999 outstanding probably can be considered "small business" in this category between 1970 and 1975 suggests that consumer credit reforms have not disproportionately affected small- to mid-sized businesses.

[5] William Lehye, Consumer Loan Co., Tr. 4358-62 ("* * * since I have been in the business for 36 years, I can look a guy in the eye and make a loan. But, if you take a chain organization or bank where you have never met this fellow before and you have not been in the community for 33 years and you are learning to be a loan manager, there is no way that chains or anyone else other than small business like myself can make it on character alone."); Al Brandt, Brandt Finance Company, Tr. 7516-16; H. E. Smith, First Finance Company, Tr. 2950-51; William Probasco, Mid Valley Time Loan, Tr. 6128-29; Ray Houghton, Home Finance Corp., Tr. 6624; Joseph Park, Community Finance Co., Tr. 3189; Bernard Cunningham, Windsor Locks Finance, Tr. 8572-73; James Hassenger, Citizens Loan and Thrift Company, Tr. 3621.

[6] *See generally*, subpoenaed finance company consumer files operating manuals and employee training materials in R-XI. G. Benston, *The Costs to Consumer Finance Companies of Extending Consumer Credit*, NCCF Technical Studies Vol. II at 8 (labor turnover averages about 80 percent per year for most companies).

[7] *See*, National Commission on Consumer Finance, *Technical Studies*, Vol. V at 72-78 (banks, finance companies, and retailers' use of security interest and repossession provisions); 79-83 (banks and finance companies' use of deficiency judgments).

Two remedies prohibited by the rule, wage assignments and confessions of judgment, tend to be included more frequently in the form contacts of single-state (compared to multi-state) finance companies and retailers. *Id.* at 53-55, 66-68. This result may be explained in part by the widespread state restrictions imposed upon these remedies which necessarily limit their importance to any company operating on a national scale. The frequency of inclusion of these two remedies in bank contracts did not differ significantly between large and small banks in the NCCF survey. *Id.* at 51, 64. Another reason for this phenomenon may be that smaller creditors cannot afford more expensive, formal collection methods.

[8] Paul Smith, Vice Dean of the Wharton School, identified bank commercial loan interest rates as "the most important" source of difficulty for small finance companies. Tr. 8494. By the same token, Dr. Smith pointed out that large finance companies are able to obtain capital at lower rates than small firms. Tr. 8495. He also stated that increasing competition from banks and credit unions and economies-of-scale in large, multi-branch operations have contributed to decreases in the number of independent firms. Tr. 8494-95. In his testimony, Dr. Smith did not allege that regulatory restraints have figured in this trend. *See also*, Robert C. Fecht, Connecticut Banking Department, Tr. 11203-69.

[1] FTC rules only preempt state law where there is a direct conflict. See, *e.g.*, Statement by the Commission in *Hearings on S. 986*, 92d Cong., 1st Sess. 65 (1971) at 15; *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 141 (1963). *Florida Lime* held that for Federal law to preempt there must be "such actual conflict between the two schemes of regulation that both cannot stand in the same area," or "evidence of a congressional design to preempt the field." No evidence of a design to preempt the field of creditor remedy regulation is present in either the Federal Trade Commission Act or the rule.

requirements.[2] We have, however, adopted a provision (Section 444.5) that affords an opportunity for states whose laws are substantially equivalent to, or more protective than, the rule to apply for specific exemption from the rule. This provision can be invoked with respect to any provision of the rule, but we are particularly mindful of the states' role in defining what items are considered necessities, in the context of the rule's household goods definition.

Under §444.5, the rule will not be in effect in a state to the extent specified by the Commission only if: (1) Application for an exemption is made by a state; (2) there is a state requirement or prohibition [3] in effect that applies to any transaction to which a rule provision applies; and (3) the state shows that its provision provides a level of protection that is as great as, or greater than, the protection afforded by the rule provision. If an exemption is granted, it shall be in effect only for as long as the state administers and enforces the state provision effectively.

As set forth in §444.5, the Commission will determine the appropriate relationship between the rule provisions and state provision on a case-by-case basis in the context of an exemption proceeding conducted pursuant to §1.16 of the Commission's Rule of Practice. The Commission will evaluate appropriate petitions for exemption made by state governmental agencies to determine the level of protection to consumers and whether the state regulation is administered and enforced effectively.

The requirement in §444.5 that a comparable state requirement be "substantially equivalent" to the Commission rule provision does not, in our view, require that the state requirement mirror exactly the Commission provision. Any differences that exist, however, should be minor so as not to deprive consumers of the level of protection guaranteed by the Commission rule nor to complicate significantly compliance by interstate creditors.[4] Other factors that will be considered by the Commission in determining whether an exemption is warranted include the resources committed by the state to enforce its provisions, and the extent of any private rights of action available to aggrieved consumers.

Only state governmental entities may request exemptions from provisions of the Commission's rule under §444.5. The grant of an exemption based on state requirement will necessarily place on the state the primary burden to enforce its provision. Therefore, a decision to seek exemption should be made solely by the state entity involved.

In a number of instances, participants in the proceeding indicated that the rule might conflict with state law, or interact with state law in a confusing or unforeseen way. We have adopted modifications in the rule to eliminate these problems.[5]

In response to concern expressed by state officials [6] and others,[7] the Commission takes this opportunity to make clear that the rule is not intended to occupy the field of credit regulation or to preempt state law in the absence of requirements that are inconsistent with the rule.

XII. Empirical Evidence on the Benefits and Costs of Provisions Considered by the Commission But Not Adopted.

This section discusses the benefits and costs of provisions of the 1975 proposed rule that the Commission considered but did not accept, together with analysis of a disclosure alternative considered by the Commission during its final deliberations on the rule.

A. Deficiencies

A deficiency arises when repossessed collateral is sold for less than the amount owing on a debt. The Commission has considered but rejected a provision that would have required valuing collateral other than household goods at its retail price for purposes of calculating deficiencies. The provision would have required an election of remedies in the case of household goods collateral, requiring creditors to choose between repossession or suit.

1. Prevalence

Sizeable deficiencies occur in the majority of transactions involving automobile repossessions; average automobile deficiencies range from 25 to 50 percent of the balance owing at the time of default.[1] Little evidence addresses deficiencies for other types of collateral. Creditors apparently pursue a deficiency only infrequently, and on average creditors recover no more than 5 to 15 percent of the deficiency.[2] As the Presiding Officer noted, under these circumstances creditors have an incentive to obtain the best possible price, net of sales costs, for collateral.[3] There is, therefore, insufficient evidence that problems in the valuation of collateral are prevalent.

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[2] *See, Mobil Oil Corp.* v. *Attorney General*, 380 N.E.2d 408 (Mass. 1972) in which the court held that a state statute banning certain promotional games of chance was not preempted by a Federal Trade Commission rule regulating such games.

[3] For purposes of this rule, a state requirement or prohibition could include statutes and formal state regulations. It would not include informal enforcement policy statements.

[4] The standard is analogous to that applied by the Federal Reserve Board in determining state exemptions from requirements of the Truth in Lending Act. *See* Board of Governors of the Federal Reserve System, Consumer Leasing, Truth in Lending; Exemption Application * * *, 47 FR 16210, April 15, 19082.

[5] For example, we have excluded certain wage assignments from Section (a)(3) of the rule because of possible problems with the California Personal Property Brokers law, clarified Section (a)(2) on waivers of exemption to avoid problems with mortgage laws in certain states, and significantly scaled back § 444.3 on late fees in such a way as to avoid conflict with state laws on late fees. See generally the sections of this Statement on individual rule provisions.

[6] *E.g.*, Tucker Trautman, Colorado Assistant Attorney General, HS-252 at 3-12; Richard Gross, Massachusetts Assistant Attorney General, Tr. 10926; Richard Victor, Wisconsin Assistant Attorney General, HX-151; Robert Patrick, General Counsel, Wisconsin Office of Commissioner of Banking, HX-152 at 8.

[7] *E.g.*, National Consumer Law Center, R-I(c)-103 at 10-11; Jonathan Epstein, Essex-Newark Legal Services, Tr. 8947; Michael Burns, Legal Aid Society of Minneapolis, HX-85 at 13; Terry Friedman, Western Center on Law and Poverty, Tr. 8337; Ronald Gull, Wisconsin Consumer League, Tr. 8376-77; Mary Gillespie, San Francisco Neighborhood Legal Assistance Foundation, Tr. 8503-03; James Brown for Consumer Affairs, University of Wisconsin Extension, HX-153 at 12. The Presiding Officer suggested that language should be added to the rule to eliminate conflicts with certain Federal laws or regulations. Presiding Officer's Report at 352. Examination of the testimony cited by the Presiding Officer in support of this recommendation does not reveal any specific conflicts between the rule and Federal law. Although there were no direct conflicts, witnesses were concerned about the relation between various Federal laws and the rule provisions on late charges, waivers of exemption, and restrictions on non-purchase money security interests. We have adopted modifications in these provisions that eliminate the concerns expressed. In particular we have substantially reduced the scope of the late fees provision, thereby avoiding problems with Federal late fees regulation, and have clarified the waivers provision and modified the security interest provision so that they do not effect real property mortgages.

[1] *E.g.*, Note, "Defaulting Debtors and the Judicial Process—The FTC's Proposed Restriction on Delinquency Judgments: Section 444.2(a)(7) of the Rule on Credit Practices," 8 Conn. L. Rev. 459, HX-339; Note, "Business as Usual: An Empirical Study of Automobile Deficiency Judgment Suits in the District of Columbia," 3 Conn. L. Rev. 511 (1971). R-XI-84; Shuchman, "Profit on Default: An Archival Study of Repossession and Resale," 22 Stan. L. Rev. 20 (1969). R-XI-85; Note, "I Can Get It For You Wholesale: The Lingering Problem of Automobile Deficiency Judgments," 27 Stan. L. Rev. 1031 (1975). HX-247; GMAC, R-I(a)-612 at 9-10; Bank of America, HX-227 at 6; Security Pacific National Bank, HX-204; Gwennap, HX-500 at Table 4; Milroy, Tr. 5463-67; Nagel, R-II(g)-64; March, Tr. 2318.

[2] *E.g.*, Schmidt, Tr. 6194; GMAC, R-I(a)-612 at 10; Brown, Tr. 2771; Martin, Tr. 1143, 1154-55; Marsh, Tr. 2319-20.

[3] Presiding Officer's Report at 250.

2. Benefits

The benefits of an election of remedies requirement in repossession of household goods would be similar in nature if not magnitude to those that would result from the provision to prohibit non-purchase money security interests in household goods. When a deficiency is pursued, a requirement for valuation at the retail price would benefit borrowers, because normally resale would take place at the lower wholesale value. In the event of abuse, resale may take place below wholesale value.

Retail valuation thus raises two issues. The first is the requirement to credit consumers with the retail rather than the wholesale value of repossessed collateral before pursuing a deficiency. The second involves any remaining problems in cases where consumers are credited with less than the wholesale value of the goods. These issues will be addressed before considering the benefits and costs of the provision.

The difference between retail and wholesale prices is a result of the costs of retailing. The Commission concluded that it is not unreasonable for defaulters to bear the costs of retailing repossessed collateral and that sales at wholesale prices are therefore not inherently unfair. When retailers sell repossessed collateral themselves, they normally do sell it on the retail market.[4]

The fact that repossessed cars are sold for prices below wholesale book value [5] can often be explained by differences in the condition of repossessed cars and the average "good" used car,[6] and hence there is little basis for concluding that undervaluation of collateral is prevalent.

The record does, nevertheless, reveal some problems in valuation of collateral when the creditor and the buyer are closely related. When the creditor sells the car to itself or in a "sweetheart" deal, there is an incentive to undervalue it to the extent that recovery on a deficiency is possible. However, the evidence does not indicate that such undervaluations are prevalent,[7] and they frequently violate existing state law. The U.C.C. requires that collateral be disposed of in a "commercially reasonable" manner. As the Presiding Officer noted, a valuation requirement "is not a self-executing remedy. To secure benefits, consumers must resort to the courts just as they must do to insure that sales of collateral under current laws are made in a commercially reasonable manner. In view of reluctance or inability to take this action as shown by the record, the provision will be largely ineffective." [8] We therefore conclude that a case-by-case approach to enforce existing standards of valuation in the event of abuse is preferable to a rule that would restrict the legitimate use of deficiencies.

3. Costs

To the extent that these provisions would reduce recovery on deficiencies, or restrict repossession of household goods used as collateral for installment credit or purchase money loans, they would reduce the value of collateral to creditors and hence increase creditors' costs and losses due to defaults. In addition, the determination of retail value and the allocation of selling costs would involve substantial costs for creditors as well as enforcement agencies.[9] These costs would be especially great if a vehicle required extensive repairs or was resold several times before its eventual retail disposition.

Furthermore, the retail value provision could create perverse incentives. Some debtors might intentionally default on their loans in order to obtain free retailing services, the costs of which would be imposed on creditors.[10] The rule would also create incentives for creditors to enter retailing even though costs might be lower if more efficient retailers were used.[11]

4. Commission Decision

A majority of the Commission decided that this provision would impose costs, and could raise the cost and reduce the availability of credit, in excess of offsetting benefits. Crediting debtors with the wholesale value is not unfair when a higher price is not obtained, there is little evidence of prevalence concerning valuation below the wholesale value, and such valuations are already illegal under current standards. Our decision is consistent with the Presiding Officer's findings concerning the retail value provision.[12]

B. Attorney's Fees

The Commission considered but rejected a provision prohibiting credit contract clauses requiring that debtors pay attorneys' fees incurred by creditor in debt collection.[13] This provision would not have restricted the power of the courts to impose such fees on defaulters under state law, however. Consequently, the provision might have had little effect in some states.[14]

1. Prevalence

A large majority of the states permit attorneys' fees clauses, although some ban them on small loans and/or place limits on the size of the fees.[15] Record evidence indicates that such clauses are included in the great majority of contracts when they are permitted by state law.[16] Attorneys' fees represent a significant share of the average judgment.[17]

2. Benefits

The rationales offered for this provision were that attorneys' fees exceed actual costs, that consumer liability for attorneys' fees discourages the assertion of valid defenses, and that consumer liability reduces creditors' incentives to minimize their legal costs.

The evidence shows that the attorneys' fees assessed against defaulters generally reflect what attorneys charge creditors for their services.[18] The evidence also shows that, in some specific instances, what attorneys charge creditors for their services bears little relation to the amount of work performed and may appear excessive. However, this is explained by the way attorneys are paid, *e.g.*, a percentage of the unpaid obligation,[19] and does not imply that

[4] *E.g.*, R-XI-167.

[5] Note 1 *supra* at HX-338.

[6] *E.g.*, R-XI-71-77 and R-XI-70.

[7] Presiding Officer's Report at 248.

[8] Presiding Officer's Report at 249.

[9] *E.g.*, Friedman, Tr. 61-62; Breeden, Tr. 1400; Edwards, Tr. 8508; Boyle, Tr. 18-19; Fish, Tr. 522-23; Walthen, Tr. 2312; 2315-17; Martin, Tr. 1142; Warren, Tr. 8315-8316; NCLC, R-I(c)-103 at 41, 54; NCLC, R-XIII-40 at 153.

[10] *E.g.*, Brown, Tr. 2772-73; Carner, Tr. 1498-99.

[11] Bureau of Economics, "Comments on Credit Practices Rule," August 18, 1980, at 54-55.

[12] Presiding Officer's Report at 240.

[13] One version of the provision would have allowed exceptions where attorneys' fees are payable to the prevailing party or require a judicial determination that they are reasonable based on the value of services performed. The Commission rejected this version because it was not supported by the record. A provision that attorneys' fees are to be paid by the losing party would have little impact, because debtors have default judgments entered against them in the vast majority of cases. Nothing would be gained from a requirement of judicial determination of reasonableness, because the evidence discussed below suggests that attorneys' fees assessed against defaulters are already subject to state requirements of judicial review for reasonableness.

[14] Presiding Officer's Report at 322.

[15] NCFA, R-XIII-31 at C-22-23, and Presiding Officer's Report at 180.

[16] NCFA, HX-493; NCCF, Technical Studies, Vol. V at 43-45.

[17] The NCLC survey indicates legal aid attorneys believe the average is 20 percent. HX-467, HX-469. The record contains references to figures of 5 to 33 percent in individual cases; *e.g.*, Baker, HX-443 at 1-2; Baker, HX-444 at 5-11; Paer, Tr. 5343; Presiding Officer's Report at 188.

[18] *E.g.*, Hellerstein, Tr. 7091-92; Wehner, Tr. 9991; Kushel, HX-388 at 13-16; Goldberg, Tr. 8119, 8136-37; Levenstein, Tr. 8353; Nestlerode, Tr. 7207.

[19] Presiding Officer's Report at 188.

debtors overcompensate creditors. As the Presiding Officer found, on average, "attorneys' fees, as limited by state laws, do not fully reimburse creditors for the amounts they actually expend for such fees." [20]

This provision would benefit borrowers to the extent that, in the event of default, it would increase their bargaining power with creditors and reduce the size of the judgments against them.

Because this provision would reduce the expected cost of defending a lawsuit, under some circumstances it would provide benefits by encouraging the successful assertion of valid defenses. The record contains evidence of instances in which a debtor agreed not to assert a defense in return for the creditor's agreement to waive attorney's fees.[21] The decision to reach a settlement reflects a mutual interest in minimizing legal costs. Although an attorney's fees clause could affect the terms of settlement, it would not necessarily affect the probability of a settlement. In any event, the Commission shares the Presiding Officer's conclusion that the "use of attorneys' fees clauses to persuade consumers to pay debts they do not owe or to forego valid defenses is simply not supported by the evidence in this record." [22]

The suggestion that this provision would provide benefits by encouraging creditors to limit their legal costs is not sufficiently supported by the record. As with deficiencies, creditors have an incentive to minimize attorneys' fees and other collection costs, because generally they are not fully reimbursed by defaulters.[23]

3. Costs

As is the case with any measure that reduces the costs of default to the borrower, the attorneys' fees provision might increase creditors' collection and other costs. In the event of default and a judgment, what borrowers would gain in reduced judgments as a result of this provision, creditors would lose in reduced recoveries. In addition, if the provision did encourage the assertion of defenses, total legal costs would rise.

4. Commission Decision

After weighing the record evidence, the Commission determined that the costs of this provision outweigh the benefits. This is consistent with the conclusion of the Presiding Officer that "* * * the record does not permit an objective determination that the degree of consumer injury is sufficient to justify prohibiting the inclusion of attorneys' fees clauses in consumer credit contracts." [24]

C. Third Party Contacts

The Commission considered but rejected a provision to prohibit creditor contacts with third parties except to locate the debtor, to determine the nature and extent of the debtor's income or property, or as a court permits.

1. Prevalence

Record evidence indicates that many consumer credit contracts contain provisions expressly waiving the debtor's right to privacy or otherwise permitting third party contacts. At the time credit is extended creditors often obtain names of employers, relatives, friends, and neighbors.[25] Fifteen states limit third party contacts, and two prohibit them.[26]

The NCFA survey of finance company contracts indicates that third party contacts with employers in the case of delinquency occur in 1.5 percent of personal loans and 0.23 percent of sale finance contracts.[27] The percentage increases to 5 percent for loans delinquent 60 days or longer. Some of these contacts are incident to wage assignments and garnishments.[28]

The NCFA survey shows that contacts with third parties other than employers are more frequent, occuring in 12 percent of personal loans and 6 percent of sales finance contracts, and increasing to 35 percent of personal loans which have been delinquent for 60 days or longer.[29] Almost half these contacts are with relatives of the debtor. The vast majority are to locate or leave a message for the debtor. Nonetheless, the survey reveals that about 5 percent of these contacts are to seek collection from a third party.[30]

The record does not contain evidence of widespread abusive third party contacts. In the case of creditor contacts with a debtor's employer, it is in the creditor's interest refrain from abusive conduct because to do othewise might jeopardize the debtor's earnings.[31]

2. Benefits

This provision would benefit borrowers to the extent that it would reduce the ability of creditors to apply pressure to them in the event of default, reduce contacts with employers that might endanger debtors' jobs, reduce loss of privacy, or otherwise reduce abusive contracts. Examples of such abuses shown on the record include threats to reveal information to third parties, disclosures of information to third parties that amount to gross invasions of privacy, threats against third parties, or threats against debtors conveyed to third parties.

The provision requiring a contract clause ruling out third party contacts would produce few benefits because of enforcement problems. In the event of a prohibited third party contact, the debtor would have to sue for breach of contract, and the remedy would be limited to actual damages. It is unlikely that much litigation of this type would occur, because the large majority of judgments against debtors are taken by default.[32]

3. Costs

In some cases, the restriction on third party contacts could work to the detriment of debtors because these contacts may currently prevent the use of more onerous collection methods.[33]

This provision would increase creditors' collection costs and perhaps losses due to default. Many contacts are efficient, legitimate business procedures, *e.g.*, contacts with third parties who might posses the collateral or contacts with other creditors for purposes of instituting bankruptcy proceedings.[34] A general prohibition on third party contacts of the type contemplated by this provision as proposed would inevitably prevent some useful contacts because of problems in drawing a clear line between abusive and legitimate contacts.

4. Commission Decision

The majority of the Commission decided that the costs of this provision outweigh its benefits. We consider that a case-by-case approach is more appropriate to stem abusive third party

[20] Presiding Officer's Report at 171.

[21] *E.g*, Bodron, Tr. 324–28.

[22] Presiding Officer's Report at 182.

[23] *E.g*, Gwennap, Tr. 12217–18; Wohner, Tr. 9091.

[24] Presiding Officer's Report at 183.

[25] *E.g*, NCLC, HX–467; Avco, R–XI–AVCO–616; General Finance Co., R–XI–GFC–2 at 210–2.

[26] NCFA, R–XIII–31 at C–26–27.

[27] Shay, HX–494 at 57; NCFA, HX–495 at Q11, HX–496 at Q11, HX–497 at Q11, HX–498 at Q11, HX–499 at Q11. NCFA data may understate third party contacts. Demasco, Tr. 11981–11984.

[28] Shay, HX–494 at 63.

[29] NCFA, HX–498 at Q11 and HX–499 at Q11.

[30] *Id.*

[31] Curtis, Tr. 2652; Thomasch, Tr. 8360.

[32] Caplovitz, *Consumers in Trouble: A Study of Defaulting Debtors*, at 100, and Warner, reporting results of 8 U. Conn. L. Rev. 412 study, Tr. 8303–04. Because of this problem, we also considered a direct prohibition on third party contacts. Even with this change, the provision was rejected because of its other costs, particularly inteference with legitimate contacts.

[33] *E.G.*, Schmidt, Tr. 6199–6200; Tanner, HX–171 at 15; Thomas, Tr. 9193–95.

[34] *E.G.*, Childers, Tr. 1168–87.

contacts without restricting legitimate contacts. In this decision, we departed from the findings of the Presiding Officer, who concluded that any potential benefit from third party contacts was "completely outweighed" by the potential for consumer injury.[35] However, the Presiding Officer did find "a clear necessity for redrafting this provision of the rule so as to permit the creditor use of third party contacts that have a genuine business purpose." [36] We concluded that because of the difficulties of distinguishing contacts that are injurious from those that are beneficial, case-by-case enforcement against contacts that cause injury to consumers is a more cost-effective approach.

D. Late Charges

Another proposed rule provision that we rejected would have prohibited late charges, that is, fees assessed for late payments above and beyond interest on the late payments.

1. Prevalance

Consumer credit contracts almost universally provide for the assessment of late charges, and such charges are usually levied when payments are late.[37] The amounts of these charges are limited by federal and state laws.[38]

2. Benefits

Borrowers would be better off in the event of delinquency if late charges could not be assessed. However, in the absence of pyramiding there is no evidence of creditor abuse in imposing late charges.[39] In general the charges assessed do not fully compensate creditors for the extra costs of handling delinquent accounts.[40]

3. Costs

Late charges serve a dual purpose. They provide an incentive to the debtor to make payments on time, and they partially compensate the creditor for the additional costs [41] involved in collecting delinquent payments. Creditors receive a significant amount of income from late charges.[42]

Without late charges a debtor could effectively convert a precomputed installment contract or loan into open-ended credit. This could create serious portfolio problems for a creditor, and in particular would increase the risks related to changes in interest rates and matching of the terms of assets and liabilities. To prevent this problem, a creditor would have to declare a default and accelerate the due date of the entire balance. Such a choice would injure consumers rather than help them.

4. Commission Decision

The Commission concluded that the costs of the proposed provision outweigh the benefits. The benefits to borrowers would not be sufficient to offset the adverse effects on the cost and availability of credit. This is consistent with the findings of the Presiding Officer: "there does not appear to be any economic justification for [this provision of] the rule, at least from the standpoint of the consumer."[43]

E. Cross-Collateralization.

Cross-collateralization occur when goods purchased from a retailer on credit are used to secure credit extended for subsequent purchases until the account is cleared. A provision of the proposed rule which we decided not to promulgate would have restricted cross-collateral clauses in installment sales contracts. Essentially, the provision would have required first-in, first-out accounting for credit contracts covering multiple purchases.

1. Prevalence

Cross-collateral clauses are allowed in all but two states; however, another 18 states mandate a first-in, first-out accounting principle similar to the one specified by the proposed provision. Another 16 states mandate an accounting principle, based on proration of payments, which would have been prohibited by the proposed provision.[44]

The NCLC survey of legal aid attorneys and other evidence suggest that cross-collateral clauses are often used by retailers, particularly by sellers of furniture and appliances, in states where they are permitted.[45] However, this evidence is not systematic, and there is insufficient evidence in the record to permit an estimate of the frequency with which such clauses appear.

Also, a majority of the Commission found that there is insufficient evidence that cross-collateral clauses cause any notable degree of consumer injury. There is some evidence that use of such provisions by major retailers has not posed problems for consumers.[46]

2. Benefits

Borrowers would probably be better off in the event of default if cross-collateral clauses were restricted, because the amount of collateral subject to repossession would be reduced. However, little is known about the accounting schemes that would be used by creditors if cross-collateral clauses were prohibited or about their implications for consumer debtors.

3. Costs

This provision could significantly reduce the value of purchase money security interests. No payments would be allocated to reducing the principal owed on the most recent purchase until all earlier purchases are paid off. If preceding purchases were not paid off until a year after the most recent one, for example, the only security for the entire amount of the credit extended for the most recent purchase would then be a year-old appliance or piece of furniture.[47]

4. Commission Decision

In light of the fact that the record does not permit a finding regarding the prevalence of cross-collateral clauses or the prevalence of consumer injury, and because the record does suggest important costs that would result from restriction of security for retail credit sales, a majority of the Commission concludes that the benefits of this provision would not outweigh its costs.[48]

F. Other Cosigner Provisions

One provision of the originally proposed rule that a majority of the Commission decided not to accept would have required a three-day waiting period before cosigners could obligate themselves;[49] another would have limited cosigner liability; another would have required that the creditor provide the cosigner with copies of all documents signed by the cosigner and all documents furnished to the debtors; another would have required the creditor to notify the cosigner whenever the debtor became delinquent;[50] and

[34] Presiding Officer's Report at 259.

[35] Presiding Officer's Report at 263.

[37] Presiding Officer's Report at 203.

[38] FHA, HX-424 at 3, 24; NCLC, R-I(c)-103 at 64.

[39] Presiding Officer's Report at 195, 203.

[40] *E.g*, Shay, HX-494 at 55-56.

[41] *E.g.*, Himoto, Tr. 5338; Lapan, Tr. 11479.

[42] Presiding Officer's Report at 203.

[43] Presiding Officer's Report at 325.

[44] NCFA, RX-XIII-31 at C-15-16.

[45] *E.g.*, NCLC, HX-467 at 25-26; Mosley, Tr. 911; O'Connor, Tr. 1630TT; Spanogle, Tr. 9716-7; Levinson, Tr. 8349; Steiner, Tr. 1765; R-GF at SF 114-1 (General Finance Company Manual); R-GECC-437; R-AVCO-767.

[46] *E.g.*, Tarpley, Tr. 3763-65; Halliburton, R-I(c)-29 at 6-7.

[47] Korten, R-I(a)-240.

[48] In this decision, the Commission departed from the conclusion of the Presiding Officer. Presiding Officer's Report at 316-317.

[49] In the latest version, this was restricted to cases where the debtor was already in default. *See* Staff Report at Appendix A, p. 5.

[50] In the latest version, this was restricted to delinquencies of 30 or more days. *Id.* at 5-6.

another would have required that the creditor reduce a claim to judgment before seeking payment from the cosigner.

1. Waiting Period

The rationale for the waiting period was primarily the possibility that creditors might use high pressure tactics to secure cosigners, especially in situations where the loan is already in default. The record contains some evidence that such tactics are used,[51] but there is insufficient indication that their incidence is significant.[52] None of the states appear to require such a waiting period.[53]

The provisions would impose two costs every time a cosigner is used: the credit could be delayed, which could be a serious problem in emergency situations, and a second meeting between the creditor and cosigner would be required. Creditors uniformly and vociferously objected that the three-day waiting period was unreasonable and unnecessary.[54]

The Presiding Officer found that "in view of the evidence of delay, inconvenience, and costs accompanying a required three-day cooling-off period for cosigners, it is concluded that the record does not support a requirement for so drastic a remedy." [55] We concur in this determination.

2. Cosigner Liability

It was proposed that the cosigner's liability be limited to the total amount of payments for which the debtor is obligated at the time the cosigner signs.[56] This provision would impose a cost on creditors, who would be unable to seek compensation from cosigners for late charges, attorneys fees, and court costs.

The Commission shares the Presiding Officer's conclusion that "there is insufficient justification for the rule's limitation on cosigner liability." [57]

3. Documents

In most states, creditors are not required to give cosigners copies of the documents they sign or other documents, and in most cases these documents are not given.[58] Such documents would assist cosigners in presenting defenses when a creditor demands payment from them. The record contains a few references to instances in which cosigners tried unsuccessfully to obtain copies of the documents they signed,[59] but no systematic evidence addresses the incidence of this problem. This requirement would increase creditors' costs because many documents, including such things as warranties, are involved.

The Presiding Officer believed that cosigners should be furnished with such documents.[60] The Commission concluded that the record provides insufficient evidence to conclude that unavailability of documents when needed is sufficiently common to offset the costs of providing documents in all instances.

4. Notice of Delinquency

The rationale for requiring notice to the cosigner of delinquency by the debtor is that lack of notice deprives the cosigner of an opportunity to bring pressure to bear on the debtor or otherwise work to forestall more serious delinquency. Cosigners routinely sign waivers of their rights to notice of nonpayment.[61] However, there is little evidence in the record indicating that cosigners are not presently notified of delinquency. On the contrary, there is evidence that they are notified about serious delinquencies, because creditors often seek payment from cosigners.[62] The provision would have required creditors to contact cosigners even in cases of minor delinquency. When minor delinquencies are corrected, an additional notice would be necessary to inform the cosigner of this fact. These repeated contacts would increase creditors' costs. In addition, the required contacts might lead to unnecessary embarrassment for debtors and cosigners alike.

The Presiding Officer concluded that this provision was unnecessary,[63] and we concur.

5. Remedies Applied First to Debtor

The Commission's conclusion that the majority of defaults occur because the debtor cannot pay [64] suggests that pursuing the cosigner when the debtor can pay is unlikely to constitute a significant problem. Despite isolated indications, no reliable evidence contradicts this proposition.

The proposed provision would increase creditors' collection costs in cases where the debtor cannot pay, because it would require an unnecessary court action. One reason that cosigners are used is that they usually pay without court action when the creditor asks them to do so.[65]

6. Commission Decision

The Commission decided that these proposed provisions would impose substantial costs and that the evidence does not indicate that they would provide benefits in a significant share of cases.

G. Empirical Evidence on the Benefits and Costs of the Disclosure Alternative

An alternative to the rule that we promulgate here was considered but rejected during our final consideration of this proceeding. It would have required disclosure of information to borrowers concerning the contractual remedies available to creditors. The creditor would have been required to give the borrower a one-page, plain English disclosure containing a brief description of various remedies and checkoff boxes to indicate those that were included in the contract.

The disclosure alternative was proposed to the Commission late in the proceedings; consequently, little empirical evidence in the record directly addresses the benefits and costs of such an alternative.[66]

The case for a disclosure rule would be persuasive if one could establish: (1) There is inefficiently high use of creditor remedies due to a market failure caused by consumer ignorance about the

[51] CIT Financial Services, R-XI-CIT-E, Section L 418 at 1-22; Piering, Tr. 6877; McCabe, Tr. 8739-8740; Gall, Tr. 3976; Elder, Tr. 3271; Williams, Tr. 4612.

[52] Presiding Officer's Report at 278.

[53] Presiding Officer's Report at 267.

[54] Vilches, Tr. 8588; Baggett, Tr. 883; Cohen, Tr. 2485; Montgomery, Tr. 2574-75; Welsh, Tr. 4127; Schmidt, Tr. 6200; Gwennap, HX-500 at 21; Wehner, HX-380 at 10; Pfeilksticker, Tr. 2347.

[55] Presiding Officer's Report at 286.

[56] Because this could virtually prevent cosigners on open-end accounts, in the latest version the provision would not have applied to such accounts. However, the Commission rejected this restricted version of the provision, because we concluded that the costs of limiting cosigner liability would outweigh the benefits even for closed-end credit.

[57] Presiding Office's Report at 288.

[58] Butler, HX-493 at 13; Hix, Tr. 1934; Rothschild, Tr. 8504; Consumer Complaint Letters, R-XI-100, R-II(b)-414, R-II(1)-317; Erwin, Tr. 10020; Reisman, Tr. 7145; Williams, R-XVI-15; Corsetti, Tr. 10593.

[59] R-XI-DIAL-174; R-XI-CIT-35; R-XI-CIT-A-52.

[60] Presiding Officer's Report at 283.

[61] Shay, HX-494 at 61-63; Van Norman, R-II(1)-330 at 4.

[62] R-XI-GFC-485; R-XI-CTA-159; R-XI-ASSOC-92; R-XI-CIT-A-902; R-XI-LIB-65.

[63] Presiding Officer's Report at 288.

[64] *See supra* Chapter III.

[65] Presiding Officer's Report at 284.

[66] Although disclosure was not a central focus, a few commentators did suggest disclosure remedies. *See* Bankruptcy Judge T. Sam Plowden, HX-403; James Barr, National Association of Federal Credit Unions, R-I(a)-424 at 4; Dan Griffin, R-I(a)-557 at 2-3; John Robbert, Louisiana Consumers League, HX-073, Tr. 1928; Taylor, Faherty, McCutheon, 215-42-1-18-1; Brown, HX-153 at 1-3. Others opposed disclosure remedies. *See* Sidney Margolius, Tr. 11214; Stea, Tr. 5831.

remedies included in loan contracts and their meanings; (2) the disclosure would substantially reduce this ignorance; (3) the cost of the disclosure would not be high; and (4) there are no other important sources of market failure in the market for creditor remedies.

The discussion of benefits and costs presented below focuses on whether these conditions exist. The Commission found that there are in fact other important sources of market failure in the market for creditor remedies, and that consequently the disclosure alternative would not adequately deal with the problems raised by use of certain creditor remedies.

1. Benefits

Although it does not explicitly address a disclosure alternative, the rulemaking record does contain evidence of the extent to which consumers "understand the meaning, legal effect and possible consequences of the provisions included in contracts used in consumer credit transactions." [67] After reviewing the evidence, the Presiding Officer found that "consumers do not have a complete understanding of consumer credit contracts." [68] He noted that: "Consumer credit contracts are not drafted with a view to making the provisions understandable to the consumer generally and do not contain an adequate explanation of either the consumer's rights or the creditor's obligations." [69] In discussing the individual provisions of the proposed rule, the Presiding Officer's Report often infers evidence of consumer ignorance about contractual creditor remedies as a problem relating to the use of these remedies.

The fact that a significant share of borrowers have incomplete information about available creditor remedies suggests that there is a potential market failure that might be remedied by a disclosure rule. Although there is no direct information on the extent to which a disclosure would reduce consumer ignorance of specific creditor remedies, such a disclosure may well increase general consumer awareness.

If no other market failures restricted consumer choice, improved awareness would increase the ability of consumers to make credit decisions in their best interest and to comparison shop on the basis of creditor remedies. If an increased number of consumers made decisions and comparison shopped on the basis of remedies, creditors would have more incentive to compete with each other by offering those remedies that best satisfy consumer preferences.

Although it does not bear directly on disclosure of remedies, reliable record evidence on the effects of interest rate disclosures under the Truth in Lending (TIL) Act conducted for the National Commission on Consumer Finance (NCCF) indicates the potential effectiveness of disclosure of credit terms. Based on surveys of consumers conducted approximately 15 months after the effective date of the Act, the studies examined consumer awareness of annual percentage rates as well as the extent to which consumers actually shopped for interest rates.

Prior to the TIL Act, a relatively small percentage of borrowers had an accurate perception of prevailing interest rates for installment credit. The Act significantly increased awareness of prevailing interest rates.[70]

However, awareness of disclosed information is not sufficient to establish that disclosures are useful. An additional issue is the extent to which consumers actually use the disclosed information to shop for credit. Day and Brandt conducted a survey addressing consumer shopping behavior after TIL became effective. They found that over one-fifth of consumers claimed to have compared rates or postponed purchases based on TIL information.[71]

This raises the question whether the level of awareness and the extent of shopping revealed by these studies are sufficient to assure competitive markets. The NCCF concluded:

> In terms of fostering viable rate competition among credit grantors, these levels of awareness produced by TIL are probably adequate. Not all consumers need be aware of the APR or shop for credit to bring about effective price competition. A significant marginal group of consumers who are aware and do shop is sufficient to "police" the market. As Senator Douglas pointed out in the House hearings on HR 11601, " * * * it is the undecided minority that influences the sellers. So you need only have, in my judgment, about 10 percent cost conscious and they will get the firms competing for that 10 percent." [72]

The NCCF found: "In summary then, it appears that 15 months after TIL's effective date a large enough body of consumers in the general market had enough *information* to enforce price competition in that market." [73]

However, this conclusion is subject to two important qualifications which limit its relevance to the current rulemaking. First, the NCCF's discussion is concerned with the adequacy of information about interest rate options that are now available to consumers. It does not follow that in other credit areas efficient options will be made available, since there may be other market failures which prevent suppliers from offering them. Indeed, the Commission has concluded that this is the case for restrictions on certain creditor remedies.[74] Second, the NCCF results relate to shopping for interest rates. Consumers are less likely to consider creditor remedies than interest rates when they shop.[75]

We also considered a 1977 survey of consumer awareness of APRs conducted by the Federal Reserve Board.[76] The 1977 Federal Reserve Board survey addressed changes in consumer awareness of APRs since the Truth in Lending Act, thus updating the earlier NCCF studies. The survey also addressed consumer shopping behavior when considering credit transactions.

The survey found substantial increases in awareness of APRs between 1970 and 1977, and suggested that disclosures had provided enough information to influence the competiveness of the credit market for all consumers, including lower income and less educated individuals. The survey, although it showed significant awareness of APRs by consumers, does not establish that levels of knowledge and shopping as a result of disclosure will necessarily be great enough to assure that disclosure of creditor remedies will work.[77] Again, we are most cognizant of the fact that the elements which influence consumer consideration of contract terms such as interest rates and those which influence consideration of creditor remedies are so fundamentally different as to make

[67] 42 FR 32259 (1977).

[68] Presiding Officer's Report at 77.

[69] *Id.*

[70] Shay and Schober, *Consumer Awareness of Annual Percentage Rates of Charge in Consumer Installment Credit: Before and After Truth in Lending Became Effective*, National Commission on Consumer Finance (NCCF), Technical Studies, Vol. I.

[71] Day and Brandt, *A Study of Consumer Credit Decisions: Implications for Present and Prospective Legislation*, NCCF, Technical Studies, Vol. I, Chapter 5.

[72] *Consumer Credit in the United States*, Report of the NCCF at 176 (1972).

[73] *Id.* at 177, emphasis in original.

[74] *See supra* Chapter III, which discusses impediments to competition in the market for creditor remedies.

[75] *Id.*, which discusses limitations on consumer shopping for creditor remedies.

[76] 1977 Consumer Credit Survey, Federal Reserve Board, at 6.

[77] Evidence of the effectiveness of disclosure in other contexts (*e.g.*, corrective advertising) is inconclusive and of only marginal relevance to our consideration of creditor remedy disclosures. *See, e.g.*, sources cited in memorandum to the Commission from Carol Crawford, Director, Bureau of Consumer Protection, and Wendy L. Gramm, Director, Bureau of Economics, July 1, 1983, at 9–12, nn. 27–33.

generalizations about the efficacy of disclosures somewhat speculative.

Thus, even though the disclosure alternative might have produced some benefits, we concluded that disclosure would provide a less adequate remedy for existing market failures than would the prohibitory rule promulgated by the Commission. Inefficiently high use of certain creditor remedies results not only from lack of consumer awareness, but from other problems as well. Moreover, lack of consumer awareness of other relevant issues would not be addressed by the disclosure of creditor remedies. For example, some consumers may underestimate the risk of default, and some consumers may not understand legal procedure well enough to grasp the implications of some remedies (*e.g*, confessions of judgment) even if they are told that such provisions are in the contract.[78]

2. Costs

The principal cost of a disclosure rule would be the resources needed to provide the forms, individualize them for various consumer contracts, and explain them to borrowers, together with the resources needed to enforce the rule. Unlike the accepted rule, which restricts the use of collateral and collection procedures, the disclosure alternative would not prohibit the use of contract terms between informed borrowers and creditors. As a result, a disclosure alternative would avoid most of the costs of the accepted rule and any resulting effects on the cost and availability of credit.

3. Commission Decision

The Commission concluded that the benefits of the promulgated rule would exceed those of the disclosure alternative. Although the Commission also found that the costs of the promulgated rule would exceed those of the disclosure alternative, it concluded that the net benefits of the promulgated rule would exceed the net benefits that would result from a rule based on disclosures. In particular, a disclosure alternative would not address other impediments to shopping that prevent creditors from competing to supply the creditor remedies which informed borrowers would most prefer.

[78] For example, in a discussion of disclosure with respect to confessions of judgment, the Presiding Officer reported an argument that disclosure would be inadequate: "[E]ven if there is a bold-face disclosure, it was said that the idea of a suit without notice or a hearing is so foreign to the American consumer that he fails to comprehend it." *Presiding Officer's Report* at 90, *citing* Carolyn C. McTighe, Legal Aid Society of Cleveland, R-I(c)-38.

Accordingly, Title 16 of the Code of Federal Regulations is amended by the addition of new Part 444.

PART 444—CREDIT PRACTICES

Sec.

444.1 Definitions.
444.2 Unfair credit practices.
444.3 Unfair or deceptive cosigner practices.
444.4 Late charges.
444.5 State exemptions.

Authority: Sec. 18(a), 88 Stat. 2183, as amended 93 Stat. 95 (15 U.S.C. 57a); 80 Stat. 383, as amended, 81 Stat. 54 (5 U.S.C. 552).

§ 444.1 Definitions.

(a) *Lender.* A person who engages in the business of lending money to consumers within the jurisdiction of the Federal Trade Commission.

(b) *Retail installment seller.* A person who sells goods or services to consumers on a deferred payment basis or pursuant to a lease-purchase arrangement within the jurisdiction of the Federal Trade Commission.

(c) *Person.* An individual, corporation, or other business organization.

(d) *Consumer.* A natural person who seeks or acquires goods, services, or money for personal, family, or household use.

(e) *Obligation.* An agreement between a consumer and a lender or retail installment seller.

(f) *Creditor.* A lender or a retail installment seller.

(g) *Debt.* Money that is due or alleged to be due from one to another.

(h) *Earnings.* Compensation paid or payable to an individual or for his or her account for personal services rendered or to be rendered by him or her, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(i) *Household goods.* Clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the consumer and his or her dependents, provided that the following are not included within the scope of the term "household goods":

(1) Works of art;

(2) Electronic entertainment equipment (except one television and one radio);

(3) Items acquired as antiques; and

(4) Jewelry (except wedding rings).

(j) *Antique.* Any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character.

(k) *Cosigner.* A natural person who renders himself or herself liable for the obligation of another person without compensation. The term shall include any person whose signature is requested as a condition to granting credit to another person, or as a condition for forbearance on collection of another person's obligation that is in default. The term shall not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to state law. A person who does not receive goods, services, or money in return for a credit obligation does not receive compensation within the meaning of this definition. A person is a cosigner within the meaning of this definition whether or not he or she is designated as such on a credit obligation.

§ 444.2 Unfair credit practices.

(a) In connection with the extension of credit to consumers in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, it is an unfair act or practice within the meaning of Section 5 of that Act for a lender or retail installment seller directly or indirectly to take or receive from a consumer an obligation that:

(1) Constitutes or contains a cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

(2) Constitutes or contains an executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

(3) Constitutes or contains an assignment of wages or other earnings unless:

(i) The assignment by its terms is revocable at the will of the debtor, or

(ii) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, or

(iii) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(4) Constitutes or contains a nonpossessory security interest in household goods other than a purchase money security interest.

§ 444.3 Unfair or deceptive cosigner practices.

(a) In connection with the extension of credit to consumers in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, it is:

(1) A deceptive act or practice within the meaning of Section 5 of that Act for a lender or retail installment seller, directly or indirectly, to misrepresent the nature or extent of cosigner liability to any person.

(2) An unfair act or practice within the meaning of Section 5 of that Act for a lender or retail installment seller, directly or indirectly, to obligate a cosigner unless the cosigner is informed prior to becoming obligated, which in the case of open end credit shall mean prior to the time that the agreement creating the cosigner's liability for future charges is executed, of the nature of his or her liability as cosigner.

(b) Any lender or retail installment seller who complies with the preventive requirements in paragraph (c) of this section does not violate paragraph (a) of this section.

(c) To prevent these unfair or deceptive acts or practices, a disclosure, consisting of a separate document that shall contain the following statement and no other, shall be given to the cosigner prior to becoming obligated, which in the case of open end credit shall mean prior to the time that the agreement creating the cosigner's liability for future charges is executed:

Notice to Cosigner

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of *your* credit record.

This notice is not the contract that makes you liable for the debt.

§ 444.4 Late charges.

(a) In connection with collecting a debt arising out of an extension of credit to a consumer in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, it is an unfair act or practice within the meaning of Section 5 of that Act for a creditor, directly or indirectly, to levy or collect any deliquency charge on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s).

(b) For purposes of this section, "collecting a debt" means any activity other than the use of judicial process that is intended to bring about or does bring about repayment of all or part of a consumer debt.

§ 444.5 State exemptions.

(a) If, upon application to the Federal Trade Commission by an appropriate state agency, the Federal Trade Commission determines that:

(1) There is a state requirement or prohibition in effect that applies to any transaction to which a provision of this rule applies; and

(2) The state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this rule;

Then that provision of the rule will not be in effect in that state to the extent specified by the Federal Trade Commission in its determination, for as long as the state administers and enforces the state requirement or prohibition effectively.

[FR Doc. 84-5513 Filed 2-29-84; 8:45 pm]
BILLING CODE 6750-01-M

Federal Register

Thursday
March 1, 1984

Part V

Department of Justice

28 CFR Part 39

Enforcement of Nondiscrimination on the Basis of Handicap in Department of Justice Programs; Supplemental Notice

DEPARTMENT OF JUSTICE

28 CFR PART 39

[Order No. 1051-84]

Enforcement of Nondiscrimination on the Basis of Handicap in Department of Justice Programs

AGENCY: Department of Justice.

ACTION: Supplemental Notice.

SUMMARY: On December 16, 1983, the Department of Justice published a Notice of Proposed Rulemaking for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs and activities conducted by the Department of Justice. The Department has received certain preliminary comments on the NPRM that contain suggestions that the Department is inclined to accept. Therefore, during the remainder of the comment period, the Department solicits comments on the NPRM as well as comments on the suggested modifications to the NPRM set forth in this Supplemental Notice.

DATE: To be assured of consideration, comments must be in writing and must be received on or before April 16, 1984. Comments should refer to specific sections in the regulation.

ADDRESSES: Comments should be sent to: Stewart B. Oneglia, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Rulemaking Docket 004, P.O. Box 1019, Washington, D.C. 20013.

Comments received will be available for public inspection in Room 854 of the HOLC Building, 320 First Street NW., Washington, D.C., from 9:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. Copies of this notice are available on tape for those with impaired vision. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: John L. Wodatch, Deputy Chief, Coordination and review Section, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530; (202) 724-2227 (Voice) or 724-7678 (TDD); or L. Irene Bowen, Supervisory Attorney, Handicap Unit, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530; (202) 724-2245 (Voice) or 724-7678 (TDD). These are not toll free numbers.

SUPPLEMENTARY INFORMATION: The Department of Justice has received preliminary comments on Notice of Proposed Rulemaking to implement section 504 of the Rehibilitation Act of 1973, as amended (29 U.S.C. 794), with respect to programs and activities conducted by the Department, that was published on December 16, 1983 (48 FR 55996). Because those comments indicate that some portions of that proposal may be misunderstood, the Department seeks comments on suggested clarifications of its proposals.

1. We wish to clarify our reason for deleting the phrase "or interest in such property" from the definition of "facility." As used in this regulation, the term "facility" refers to structures, and does not include intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency.

2. In its proposed rule, the department omitted the list of physical or mental impairments included in the definition of "handicapped person" in the coordination regulation for federally assisted programs (28 CFR 41.31). The Department wishes to make clear that the term "physical or mental impairment," as used in that definition, includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcholism.

3. In response to the concern that the proposed rule has no specific criteria for conducting a self-evaluation, we request comment on the following alternative language for § 39.110:

Alternative § 39.110

(a) The agency shall, within one year of the effective date of this part, evaluate, with the assistance of interested persons, including handicaped persons or organizations representing handicapped persons, its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this secton, maintain on file and make available for public inspection:

(1) A list of the interested persons consulted,

(2) A description of areas examined and any problems identified, and

(3) A description of any modifications made.

In connection with this provision, the Department is considering whether the Federal Advisory Committee Act (5 U.S.C. App.) is applicable to a self-evaluation group comprised of private individuals with which a Federal agency would consult in implementing its self-evaluation responsibilities.

4. The Department also seeks comments on the following proposed new requirement that the Department make available to employees, participants, beneficiaries, and other interested persons information regarding section 504 requirements and their applicability to the programs and activities the Department conducts:

Notice. The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its appicability to the programs or activities conducted by the agency, and make such information available to them in such manner, as the Attorney General finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

5. The proposed regulation does not contain a general statement of the program accessibility requirement similar to that appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41. 56). The decision not to include this language in the proposed regulation has created the misperception that a change in substance was intended. In order to remedy this misunderstanding, we are inclined to add the following language to the regulation as the first sentence of § 39.150(a):

Except as otherwise provided in this section, no qualified handicapped person shall, become the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

6. We are inclined to believe that the following alternative language for §§ 39.150 and 39.160 would clarify our intentions regarding the meaning of the "undue financial and administrative burdens" language contained in the proposed regulation. It is our view that, because of the extensive resources and capabilities of the agency, compliance with § 39.150(a) or § 39.160 would in

most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program should be considered. The burden of providing that compliance with § 39.150(a) or § 39.160 would fundamentally alter the nature of a program or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the Attorney General personally and must be accompanied by a written statement of the reasons for reaching that conclusion. The Attorney General's decision may be appealed through the procedures established by § 39.170.

7. We would appreciate comment on the following alternative language for the program accessibility (§ 39.150) and communications (§ 39.160) sections of the regulation:

Alternative § 39.150

Insert the following before the last sentence of § 39.150(a)(2):

In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 39.150(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the Attorney General personally, after considering all agency resources available for use in the funding and operation of the conducted program, and must be accompanied by a written statement of the reasons for reaching that conclusion.

Alternative § 39.160

Insert the following before the last sentence of § 39.160(e):

In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §39.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Attorney General personally, after considering all agency resources available for use in the funding and operation of the conducted program, and must be accompanied by a written statement of the reasons for reaching that conclusion.

8. Questions were also raised about paragraph (1) of the definition of "qualified handicapped person." Some comments have taken exception to the reference in paragraph (1) to fundamental program alternations as part of the definition. The language we have proposed, however, comes directly from the Supreme Court's interpretation of section 504. So long as the definition of "qualified handicapped person" remains faithful to the statute and current case law we are receptive to alternative language. While suggestions in this regard have been received and are under review, we believe additional comment in this area on possible alternative definitional language would be helpful.

Dated: January 27, 1984.

William French Smith,

Attorney General.

[FR Doc. 84-5370 Filed 2-29-84 8:45 am]

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Federal Register

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Thursday, March 1, 1984

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FEDERAL REGISTER PAGES AND DATES, MARCH

7553-7794.....1

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List February 27, 1984.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—MARCH 1984

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
March 1	March 16	April 2	April 16	April 30	May 30
March 2	March 19	April 2	April 16	May 1	May 31
March 5	March 20	April 4	April 19	May 4	June 4
March 6	March 21	April 5	April 20	May 7	June 4
March 7	March 22	April 6	April 23	May 7	June 5
March 8	March 23	April 9	April 23	May 7	June 6
March 9	March 26	April 9	April 23	May 8	June 7
March 12	March 27	April 11	April 26	May 11	June 11
March 13	March 28	April 12	April 27	May 14	June 11
March 14	March 29	April 13	April 30	May 14	June 12
March 15	March 30	April 16	April 30	May 14	June 13
March 16	April 2	April 16	April 30	May 15	June 14
March 19	April 3	April 18	May 3	May 18	June 18
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March 21	April 5	April 20	May 7	May 21	June 19
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March 23	April 9	April 23	May 7	May 22	June 21
March 26	April 10	April 25	May 10	May 25	June 25
March 27	April 11	April 26	May 11	May 29	June 25
March 28	April 12	April 27	May 14	May 29	June 26
March 29	April 13	April 30	May 14	May 29	June 27
March 30	April 16	April 30	May 14	May 29	June 28