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federal register

Tuesday
July 17, 1984

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Administrative Practice and Procedure
Customs Service

Air Pollution Control
Environmental Protection Agency

Fisheries
National Oceanic and Atmospheric Administration

Flood Insurance
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Marine Safety
Coast Guard

Marketing Agreements
Agricultural Marketing Service

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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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Presidential Documents

Title 3—

The President

Presidential Determination No. 84-8 of May 29, 1984

Sale of Defense Articles and Defense Services to Saudi Arabia Under the Arms Export Control Act

Memorandum for the Honorable George P. Shultz, the Secretary of State, and the Honorable Caspar W. Weinberger, the Secretary of Defense

In accordance with section 36(b)(1) of the Arms Export Control Act (the Act), I hereby certify that an emergency exists which requires the sale under the Act of the following defense articles and defense services to Saudi Arabia in the national security interests of the United States:

—200 basic Stinger air defense guided missile systems (200 gripstocks with 200 missiles);

—200 additional missiles;

—Related support and training equipment, spare parts, technical support, and training for these systems and missiles.

This certification and the attached justification shall be made part of the certification transmitted to the Congress under section 36(b)(1) of the Act with respect to each of the above sales. This certification shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, May 29, 1984.

[FR Doc. 84-18957
Filed 7-13-84; 1:49 pm]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 84-11 of June 12, 1984

Eligibility of China To Make Purchases and Leases of Defense Articles and Services Under the Arms Export Control Act

Memorandum for the Honorable George P. Shultz, the Secretary of State

Pursuant to the authority vested in me by Section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing of defense articles and services to the Government of China will strengthen the security of the United States and promote world peace.

You are directed on my behalf to report this finding to the Congress.

This finding shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, June 12, 1984.

[FR Doc. 84-18958
Filed 7-13-84; 1:50 pm]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 84-12 of June 18, 1984

Deferred Payment for Purchases by El Salvador Under Section 21(d) of the Arms Export Control Act

Memorandum for the Secretary of State

On April 13, 1984, I directed the Department of Defense to proceed with the sale of defense articles and defense services from stocks of the Department of Defense to the Government of El Salvador under the provisions of section 21(d) of the Arms Export Control Act (the Act). Thereafter, pursuant to my direction, the Department of Defense made the requisite determinations concerning the sale of such defense articles and defense services up to a total of $32,000,000.

By virtue of the authority vested in me by section 21(d) of the Act, I hereby:

(1) Determine that the emergency requirements of the Government of El Salvador for acquisition of such defense articles and defense services up to a total of $32,000,000 exceed the ready availability to the Government of El Salvador of funds sufficient to pay the United States in full for them within the sixty-day periods after the date of billing upon delivery of such defense articles and the rendering of such defense services, as specified in section 21(d) of the Act; and

(2) Reaffirm the emergency request that Congress authorize and appropriate the additional funds for the military assistance program for the Government of El Salvador to finance these and other purchases, which have been requested in the proposed "Central America Democracy, Peace and Development Initiative Act of 1984," and in the supplemental appropriation request of February 21, 1984; and

(3) Extend such sixty-day periods for such defense articles and defense services to one hundred twenty days.

You are requested to report this determination to the Congress immediately.

This determination shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, June 18, 1984.

[FR Doc 84-18959
Filed 7-13-84; 1:51 pm]
Billing code 3195-01-M

Presidential Documents

Memorandum of July 11, 1984

Delegation of Authority for Reports and Determinations Concerning El Salvador

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 621 of the Foreign Assistance Act of 1961, as amended, and Section 301 of Title 3 of the United States Code, I hereby delegate to you the functions conferred upon me by the Joint Resolution "Making an urgent supplemental appropriation for the fiscal year ending September 30, 1984, for the Department of Agriculture" (Public Law 98-332), insofar as they relate to El Salvador in an unnumbered paragraph entitled "Military Assistance" and to Section 108.

This memorandum shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, July 11, 1984.

[FR Doc. 84-18960
Filed 7-13-84; 1:52 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5222 of July 13, 1984

Year of the Ocean

By the President of the United States of America

A Proclamation

The United States has long depended upon the ocean for food, transportation, national security, and recreation. Today, the ocean has become even more important to the people of our Nation—as a source of petroleum and minerals and an avenue for foreign trade. In addition, the ocean is a constant source of employment for hundreds of thousands of Americans each year.

This Nation is the steward of the resources of the ocean. Americans have long cherished the freedom of the coastal regions which border our shores. The ocean is the link between the many countries with which we have shared the discoveries of modern technology in the development of oceanography.

Our increased use of the ocean requires that we work to protect this resource effectively and efficiently. In order to do so, we must educate Americans concerning the role of the ocean in our lives and our responsibility to match increased uses of marine resources with vigilant efforts to preserve the ocean environment for the benefit of future generations.

In recognition of the importance of expanding public awareness and knowledge of the importance of the ocean and its resources, the Congress, by Senate Joint Resolution 257, has designated July 1, 1984, to July 1, 1985, as the "Year of the Ocean" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the year July 1, 1984, to July 1, 1985, as the Year of the Ocean. I call upon the people of the United States to observe such celebration with appropriate activities.

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

Ronald Reagan

[FR Doc. 84-19063
Filed 7-16-84; 10:10 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12484 of July 13, 1984

Amendments to the Manual for Courts-Martial, United States, 1984

By virtue of the authority vested in me as President by the Constitution of the United States and by Chapter 47 of Title 10 of the United States Code (the Uniform Code of Military Justice), in order to prescribe amendments to the Manual for Courts-Martial, United States, 1984, prescribed by Executive Order No. 12473, it is hereby ordered as follows:

Section 1. The third paragraph of Executive Order No. 12473 is amended by inserting "12315," after "12306,".

Sec. 2. The fourth paragraph of Executive Order No. 12473 is amended by striking out "revised" and inserting in lieu thereof "reviewed".

Sec. 3. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. The Rules for Courts-Martial are amended so that the first letter of the first word of each subparagraph that is preceded by a colon or a dash is capitalized.
b. The subsection designation of R.C.M. 305 (*l*) is amended by striking out "(*l*)" and inserting in lieu thereof "(l)".
c. R.C.M. 502(b)(2)(B) is amended by striking out the comma at the end thereof.
d. R.C.M. 506(a) is amended by inserting a comma after "selection".
e. R.C.M. 703(f)(3) is amended by inserting "of" after "determination".
f. R.C.M. 901(d)(4)(B) is amended by striking out "convening authority" and inserting in lieu thereof "authority who detailed the counsel".
g. R.C.M. 1003(b) is amended by italicizing the headings of the paragraphs and subparagraphs thereof.
h. The third sentence of R.C.M. 1107(e)(1)(C)(ii) is amended by striking out "lesser offense" and inserting in lieu thereof "lesser included offense".
i. The second sentence of R.C.M. 1107(h) is amended by striking out "provides" and inserting in lieu thereof "provide".
j. The fourth sentence of R.C.M. 1108(b) is amended by inserting "of" after "regardless".
k. R.C.M. 1110(b)(2)(B) is amended by striking out the comma between "accused" and "upon".
l. R.C.M. 1112(f)(2) is amended by inserting a comma between "rehearing" and "but".
m. R.C.M. 1113(c)(2) is amended by striking out "Undersecretary" and inserting in lieu thereof "Under Secretary".
n. The first sentence of R.C.M. 1113(d)(2)(C) is amended by inserting a comma between "concerned" and "unless".
o. The introductory clause of R.C.M. 1201(a)(2) is amended by inserting a dash after "which".
p. R.C.M. 1201(b)(3)(C) is amended by striking "authority or unless" and inserting in lieu thereof "authority, unless".
q. R.C.M. 1209(a)(2)(A) is amended by striking out the third comma and inserting in lieu thereof a semicolon.

Sec. 4. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Mil. R. Evid. 315(e) is amended by striking out "guard of police" and inserting in lieu thereof "guard or police".
b. Mil. R. Evid. 321(a)(2) is amended—

(1) by inserting a colon after "if" in the introductory clause; and

(2) by capitalizing the first letter of the first word in subparagraphs (A) and (B).

c. Mil. R. Evid. 601 is amended by striking out "this" and inserting in lieu thereof "these".

Sec. 5. Part IV of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. The rules governing the punitive articles are amended so that—

(1) the subparagraph headings are italicized; and

(2) The first letter of the first word after the semicolon in each Note is capitalized.

b. The sample finding of the specification accompanying paragraph 2b(3) (concerning Article 79) is amended by inserting a semicolon after the phrase "willfully and unlawfully kill".

c. Paragraph 10b(3)(d) (concerning Article 86) is amended by striking out "that" and inserting in lieu thereof "That".

d. Paragraph 42b(3) (concerning Article 117) is amended by striking out the semicolon and inserting in lieu thereof a period.

e. Paragraph 51b (concerning Article 125) is amended by redesignating subparagraphs (a), (b), and (c) as subparagraphs (1), (2), and (3) respectively.

f. The subparagraph designation for the sample specification in paragraph 68 (concerning worthless check offenses under Article 134) is amended by striking out the "d" and inserting in lieu thereof "f".

g. The sample specification in paragraph 95 (concerning misprision of a serious offense under Article 134) is amended by striking out the comma after "to about ——".

h. The sample specification in paragraph 96 (concerning the offense of obstructing justice under Article 134) is amended by striking out "[(recommend dismissal of the charges against said ——)" and inserting in lieu thereof "[recommend dismissal of the charges against said ——]".

Sec. 6. Part V of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. The third sentence of paragraph 2a is amended by striking out "paragraph" and inserting "subparagraph" in lieu thereof.

b. Subparagraph 4b(2) is amended by striking out "subparagraph" each time it appears and inserting "paragraph" in lieu thereof.

c. Paragraph 5b is amended by striking out "subparagraph 5d" and inserting in lieu thereof "paragraph 5d".

d. Subparagraphs 5b(1)(A), 5b(1)(B), 5b(2)(A), and 5b(2)(B) are amended so that the first letter of the first word thereof is capitalized.

e. The introductory clause of subparagraph 5b(2) is amended by inserting a dash after "command".

f. Subparagraph 5b(2)(B)(vi) is amended by striking out the semicolon and inserting a period in lieu thereof.

g. The third sentence of subparagraph 5c(1) and the first sentence of subparagraph 7f(1) are amended by striking out "part" and inserting in lieu thereof "Part".

Sec. 7. The Secretary of Defense, on behalf of the President, shall transmit a copy of this Order to the Congress of the United States in accord with Section 836 of Title 10 of the United States Code.

Ronald Reagan

THE WHITE HOUSE,
July 13, 1984.

[FR Doc. 84-19064
Filed 7-16-84; 10:11 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12485 of July 13, 1984

Central Intelligence Agency Retirement and Disability System

By the authority vested in me as President of the United States of America by Section 292 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended (50 U.S.C. 403 note), and in order to conform further the Central Intelligence Agency Retirement and Disability System to certain amendments of the Civil Service Retirement and Disability System pursuant to Public Law 98-94, it is hereby ordered as follows:

Section 252(h)(2)(A) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, shall be deemed to be amended by striking out "October 1, 1982" and inserting in lieu thereof "October 1, 1983.".

Ronald Reagan

THE WHITE HOUSE,
July 13, 1984.

[FR Doc. 84-19065
Filed 7-16-84; 10:12 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 49, No. 138
Tuesday, July 17, 1984

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Oranges Reg. 333, Amdt. 1; Valencia Orange Reg. 335]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Amendment 1 of Regulation 333 increases the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period July 6–12, 1984. Regulation 335 establishes the quantity of Valencia oranges that may be shipped during the period July 20–26, 1984. Such action is needed to provide for orderly marketing of fresh Valencia oranges for the specified periods due to the marketing situation confronting the Valencia orange industry.

DATES: Amended Regulation 333 (§ 908.633) is effective for the period July 6–12, 1984. Regulation 335 (§ 908.635) is effective for the period July 20–26, 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 rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The amendment and regulation are based upon the recommendation of and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

The amendment and regulation are consistent with the marketing policy for 1983–84. The marketing policy was recommended by the committee following discussion at a public meeting on February 14, 1984, at Ventura, California. The committee met again publicly on July 10, 1984, to consider current and prospective conditions of supply and demand for California-Arizona Valencia oranges. The committee reports the demand for Valencia oranges is seasonally slow but adequate to justify increasing the allotment for the period July 6–12, 1984, by 50,000 cartons.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553) because of insufficient time between the date when the information became available upon which the regulation and amendments are based and the effective dates necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on this action at an open meeting, and the amendment relieves restrictions on the handling of Valencia oranges. To effectuate the declared purposes of the Act, it is necessary to make these provisions effective as specified, and handlers have been notified of these actions and their effective dates.

List of Subjects in 7 CFR Part 908

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

PART 908—[AMENDED]

Section 908.633 Valencia Orange Regulation 333 is revised to read as follows:

§ 908.633 Valencia Orange Regulation 333.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period July 6–12, 1984, are established as follows:

(a) *District 1:* 195,000 cartons;
(b) *District 2:* 305,000 cartons;
(c) *District 3:* Unlimited cartons.

Section 908.635 Valencia Orange Regulation 335 is added to read as follows:

§ 908.635 Valencia Orange Regulation 335.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period July 20–26, 1984, are established as follows:

(a) *District 1:* 195,000 cartons;
(b) *District 2:* 305,000 cartons;
(c) *District 3:* Unlimited cartons.

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

Dated: July 12, 1984.

Thomas R. Clark,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-18821 Filed 7-16-84; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 83F-0337]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Ion-Exchange Resins

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for a change in the use temperature of methyl acrylate-divinylbenzene-diethylene glycol divinyl ether terpolymer aminolyzed with dimethylaminopropylamine and quaternized with methyl chloride for the treatment of sugar solutions. This action responds to a petition filed by Rohm and Haas.

DATES: Effective July 17, 1984, objections by August 16, 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: Julia L. Ho, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of November 14, 1983 (48 FR 51864), FDA announced that a petition (FAP 3A3742) had been filed by Rohm and Haas Co., Philadelphia, PA 19105, proposing that Part 173 (21 CFR Part 173) of the food additive regulations be amended to raise the use temperature of methyl acrylate-divinylbenzene-diethylene glycol divinyl ether terpolymer aminolyzed with dimethylaminopropylamine and quaternized with methyl chloride for the treatment of sugar solutions.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

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 Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), 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 carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environment impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 173

Food additives, Food processing aids.

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 Director of the Center for Food Safety and Applied Nutrition (21 CFR 5.61), Part 173 is amended in § 173.25 by revising the introductory text of paragraph (b) and by revising paragraph (b)(4) to read as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

§ 173.25 Ion-exchange resins.

* * * * *

(b) Ion-exchange resins are used in the purification of foods, including potable water, to remove undesirable ions or to replace less desirable ions with one or more of the following: Bicarbonate, calcium, carbonate, chloride, hydrogen, hydroxyl, magnesium, potassium, sodium, and sulfate except that: The ion-exchange resin identified in paragraph (a)(12) of this section is used only in accordance with paragraph (b)(1) of this section, the ion-exchange resin identified in paragraph (a)(13) of this section is used only in accordance with paragraph (b)(2) of this section, the resin identified in paragraph (a)(16) of this section is used only in accordance with paragraph (b) (1) or (2) of this section, the ion-exchange resin identified in paragraph (a)(17) of this section is used only in accordance with paragraph (b)(3) of this section, and the ion-exchange resin identified in paragraph (a)(18) of this section is used only in accordance with paragraph (b)(4) of this section.

* * * * *

(4) The ion-exchange resin identified in paragraph (a)(18) of this section is used to treat aqueous sugar solutions subject to the condition that the temperature of the sugar solution passing through the resin bed is maintained at 82 °C (179.6 °F) or less and the flow rate of the sugar solution passing through the bed is not less than 46.8 liters per cubic meter (0.35 gallon per cubic foot) of resin bed volume per minute.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before August 16, 1984 submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for 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 becomes effective July 17, 1984.

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

Dated: June 14, 1984.

Sanford A. Miller,

Director Center for Food Safety and Applied Nutrition.

[FR Doc. 84-18789 Filed 7-16-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COPT Honolulu Regulation 84-62]

Safety Zone Regulations: Hilo Harbor, HI

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone around the USS OUELLET (FF 1077) and in Hilo Harbor, Hawaii. The zones are needed to protect the USS OUELLET (FF 1077), other vessels, and persons from a safety hazard that could result from protest activities associated with the transit of the USS OUELLET (FF 1077) through Hilo Harbor. Entry into the zones is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 18 July 1984 when the USS OUELLET (FF 1077) reaches a point five nautical miles distant from the Hilo Harbor Breakwater Light (LLNR 3673.25; 19°44.8′ N latitude, 155°04.7′ W longitude). It terminates upon completion of mooring by the USS OUELLET (FF 1077), unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Commander J.M. Macdonald, (808) 546-7146.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is

being made effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest and immediate action is needed to respond to potential hazards associated with activities planned to protest the entry of the USS OUELLET (FF 1077) into the port of Hilo.

Drafting information

The drafters of this regulation are LT C. A. CRAMPTON, project officer for the Captain of the Port, and CDR R. B. COLE, project attorney, Fourteenth Coast Guard District Legal Office.

Discussion of the regulation

The event requiring this regulation is the entry of the USS OUELLET (FF 1077) into Hilo Harbor, Hawaii on 18 July 1984. The vessel is visiting Hilo to participate in the International Festival of the Pacific. Anti-nuclear protesters on the island of Hawaii have publicized their intent to conduct a blockade of the harbor by placing themselves in the path of the USS OUELLET (FF 1077) as it enters the harbor. Because of the size of the USS OUELLET and the restricted entrance channel through Hilo Harbor, a safety hazard would exist if a number of smaller vessels (or persons not in vessels) placed themselves in the path of the USS OUELLET (FF 1077) as it entered the port and approached the municipal pier. The safety hazard would exist for both the USS OUELLET (FF 1077) and the vessels or persons in its path. The purpose of the safety zones is to ensure the safety of the USS OUELLET (FF 1077), other vessels, and persons as the USS OUELLET (FF 1077) approaches and passes through Hilo Harbor until completely moored.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a new § 165.T1402 to read as follows:

§ 165.T1402 Safety Zones: Vicinity of USS OUELLET and Hilo Harbor, Hawaii

(a) *Location,* the following areas are safety zones:

(1) *Moving Safety Zone.* All waters encompassed by a circle with a radius of 1900 yards around the USS OUELLET (FF 1077) from the point where the USS OUELLET is five nautical miles distant from Hilo Harbor Breakwater Light (LLNR 3673.25; 19°44.8′ N latitude, 155°04.7′ W longitude) until the USS OUELLET (FF 1077) passes abeam of that light.

(2) *Fixed Security Zone.* All waters between a line beginning on the east side of the harbor entrance at latitude 19°44′45.2″ N longitude 155°94′40.2″ W (Hilo Harbor Breakwater Light), thence southeasterly to latitude 19°44′23.9″ N longitude 155°94′33.1″ W, thence easterly to latitude 19°44′14.8″ N, longitude 155°03′25.8″ W (line intersects the breakwater), and a line beginning at latitude 19°44′45.7″ N longitude 155°05′35.0″ W, thence southeasterly to latitude 19°44′09.7″ N, longitude 155°04′59.0″ W, then due east to latitude 19°44′09.7″ N, longitude 155°04′15.9″ W (approximately 80 yards south of the charted position of Hilo Harbor Lighted Buoy 4 (LLNR 3678) on NOS chart 19324, June 1983 edition) thence southeasterly to latitude 19°44′00.0″ N, longitude 155°03′54.8″ W, and then due east to latitude 19°44′00.0″ N, longitude 155°03′25.2″ W (where line intersects face of Pier No. 1). This zone encompasses all of the charted buoys marking the approach through Hilo Harbor to the piers. This safety zone will commence when the USS OUELLET (FF 1077) arrives in Hilo Harbor by passing abeam of Hilo Harbor Breakwater Light (crossing the COLREGS DEMARCATION LINE 80.1485) and will continue until the vessel is moored at the municipal pier.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(33 U.S.C. 1225 and 1231, 49 CFR 146; 33 CFR 160.5)

Dated: July 12, 1984.

C.W. Gray,

Captain, USCG, Captain of the Port, Honolulu, HI.

[FR Doc. 84-18923 Filed 7-16-84; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations; Maryland, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, Federal Insurance Administration, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the Flood Insurance Rate Maps (FIRMs) for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be

construed to mean that the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community no.
Maryland: Harford (FEMA Docket No. 6595.	Harford County	*The Aegis*, Apr. 5, 1984, and Apr. 12, 1984.	Hon. Haberm W. Freeman, Harford County Executive, 45 South Main Street, Bel Air, MD 21014.	Mar. 26, 1984	240040
Pennsylvania: Lebanon (FEMA Docket No. 6595).	City of Lebanon	*Lebanon Daily News*, Mar. 6, 1984 and Mar. 13, 1984.	Hon. Martin Schneider, Mayor of Lebanon, 400 South 8th Street; Lebanon, PA 17042.	Feb. 28, 1984, letter of map revision.	420573A

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; delegation of authority to Administrator, Federal Insurance Administration.)

Issued: July 5, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-18810 Filed 7-16-84; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 65

[Docket No. FEMA-6612]

Changes in Special Flood Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, Federal Insurance Administration, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table.

Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the Flood Insurance Rate Map(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 65.3).

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations are in accordance with 44 CFR 65.3.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal

Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Yuma	Yuma (city of)	July 9, 1984, July 16, 1984, *Yuma Daily Sun.*	Hon. Philip G. Clark, Mayor, City of Yuma, 200 First Street, Yuma, AZ 85364.	June 19, 1984	040102B
Arizona: Yuma County	(unincorporated areas)	July 9, 1984, July 16, 1984, *Yuma Daily Sun.*	Hon. Robert W. Kennedy, Chairman, Yuma County Board of Supervisors, P.O. Box 1112, Yuma, AZ 85364.	June 22, 1984	040099B
Colorado: Adams/Arapahoe	Aurora (city of)	July 11, 1984, July 18, 1984, *Aurora Sentinel.*	Hon. Dennis Champine, Mayor, City of Aurora, 1470 South Havana, Aurora, Colorado 80012.	June 8, 1984	080002B
Maryland: Worcester	Town of Ocean City	*Eastern Shore Times*, June 13, 1984 and June 20, 1984.	Hon. Harry W. Kelley, Mayor of the Town of Ocean City, P.O. Box 158, Ocean City, Maryland 21842.	May 31, 1984, letter of map revision.	245207E
Texas: Washington	City of Brenham	*Brenham Banner-Press*, May 29,1984 and June 5, 1984.	Hon. Dorothy Fitzowski, Mayor of the City of Brenham, P.O. Box 1059, Brenham, TX 77833-1059.	May 21, 1984, letter of map revision.	480649B

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; delegation of authority to Administrator, Federal Insurance Administrator).

Issued: July 5, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-18807 Filed 7-16-84; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; California, et. al

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for the communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 1229, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
California	National City (city of) San Diego County FEMA-6574	Las Puleta Creek	At Eta Street Crossing	#1
Maps are available for review at City Hall, Planning Department, 1243 National City Blvd., National City, California.				
California	Pittsburg (city of) Contra Costa County FEMA-6586	Lawlor Creek	30 feet upstream from center of Willow Pass Road	*43
		Los Medanos Wasteway	30 feet upstream from center of Southern Pacific Railroad spur.	*25
		Kirker Creek	100 feet upstream from center of Buchanan Road	*160
		Suisun Bay (New York Slough)	Confluence of Middle Slough and New York Slough at the southeastern corner of Browns Island.	*6
Maps are available for review at the Engineering Department, 65 Civic Avenue, Pittsburg, California.				
California	Sacramento County Unincorporated Areas FEMA-6458.	Dry Creek	At the downstream limit of detailed study	*36
			At the Southern Pacific Railroad	*40
			At the upstream limit of detailed study	*47
		Notomas East Main Drainage Canal.	Area located approximately 600 feet south of Cement Way extended between Notomas East Main Drainage Canal and Sorento Road.	*33
Maps are available for inspection at the Office of the County Drainage Engineer, 827 Seventh Street, Sacramento, California.				
Massachusetts	Waltham, city, Middlesex County (FEMA 6581)	West Chester Brook	Bacon Street Culvert Inlet (upstream side)	*72
			Upstream of most downstream Private Drive	*82
Maps are available for inspection at the City Hall, 610 Main Street, Waltham, Massachusetts.				
New Jersey	New Milford, borough, Bergen County (FEMA Docket No. 6592).	Hackensack River	Corporate limits at Old-New Bridge Road (upstream side).	*9
			River Edge Road (upstream side)	*10
		Hirschfeld Brook	Upstream of Prospect Avenue	*14
		French Brook	New Bridge Road (upstream side)	*18
			Floral Court (upstream side)	*30
			Boulevard	*34
			Upstream corporate limits	*50
Maps available for inspection at Borough Hall, 930 River Road, New Milford, New Jersey.				
Oklahoma	Moore, city, Cleveland County (FEMA Docket No. 6581).	North Fork River	Upstream of Bryant Avenue (upstream crossing)	*1,187
			Upstream of Bronze Medal Road	*1,202
			Approximately 100 feet downstream of NE 12th Street	*1,216
Maps available for inspection at the City Hall, 125 East Main Street, Moore, Oklahoma.				
Oklahoma	Oklahoma City, City Canadian, Cleveland, McClain, Oklahoma, and Pottawatomie Counties (FEMA Docket No. 6586).	Chisholm Creek	Approximately 350 feet upstream NW 122nd Street	*1,140
			Approximately 650 feet upstream NW 122nd Street	*1,140
			Approximately 900 feet upstream NW 122nd Street	*1,149
Maps available for inspection at the City Hall, 200 North Walker Street, Oklahoma City, Oklahoma.				
South Carolina	Unincorporated areas of Richland County (FEMA Docket No. 6386).	Gills Creek	Gamers Ferry Road (downstream side)	*155
Maps available for inspection at Richland County Judicial Center, County Administrators Office, 1701 Main Street, Columbia, South Carolina.				
Texas	Guadalupe County (FEMA Docket No. 6586)	San Marcos River	U.S. Route 90 (upstream side)	*380
			State Route 671 (upstream side)	*405
			County Route 239 (upstream side)	*424
			Farm Market 1977 (upstream side)	*482
			Farm Market 1979 (upstream side)	*521
			Upstream County boundary	*540
		York Creek	At confluence with San Marcos River	*410
Maps available for inspection at the Guadalupe County Courthouse, 100 Court Street, Seguin Texas.				
Texas	Jersey Village, city, Harris County (FEMA Docket No 6605).	White Oak Bayou (E100-00-00)	Downstream corporate limits	*103
			At Confluence of Tributary 19.05 to White Oak Bayou	*107
		Tributary 19.05 to White Oak Bayou (E127-00-00).	At confluence with White Oak Bayou	*107
			Upstream of Southern Pacific Railroad	*114
		Tributary 19.82 to White Oak Bayou (E135-00-00).	Upstream corporate limits	*111
Maps available for inspection at the City Hall, 16501 Jersey Drive, Jersey Village, Texas.				
Texas	Temple, city, Bell County (FEMA Docket No. 6581)	Little Elm Creek Tributary No. 1	Upstream of Tower Road	*590
			Downstream face of Tower Road bridge	*588
			Approximately 1,500 feet downstream of Tower Road	*581
		Bird Creek	Upstream of corporate limit at Nugent Road	*697
			Approximately 1,000 feet upstream of corporate limit	*704
		Little Elm Creek Tributary No. 2	Downstream of Atchison Topeka and Santa Fe Railroad.	*696
			Downstream of Old U.S. Highway 81	*664
Maps available for inspection at the Municipal Building, Temple, Texas.				
Texas	Three Rivers, city, Live Oak County (Docket No. FEMA-6581).	Olds Slough	Entire streamline located within community	*141
		Nueces River	Tullos Street (extended)	*141
			South of levee located approximately 550 feet south of Tullos Street.	*141
Maps available for inspection at the City Hall, Three Rivers, Texas.				

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Virginia	Chincoteague, town, Accomack County (FEMA Docket No. 6581).	Chincoteague Bay	Entire shoreline of Chincoteague Bay and Chincoteague Channel within community.	*8

Maps available for inspection at the Chincoteague Town Office, Chincoteague, Virginia.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: July 5, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-18811 Filed 7-16-84; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 83-1375; FCC 84-289]

American Telephone and Telegraph Co.; Provision of Basic Services Via Resale by Separate Subsidiary

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: This Report and Order authorizes AT&T Information Systems to provide basic, resold services in order to promote higher quality and lower prices for basic services, customer premises equipment, enhanced services, and combinations of these products and services.

EFFECTIVE DATE: August 16, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Warren Lavey, Common Carrier Bureau, (202) 632-6910.

Report and Order

In the Matter of American Telephone and Telegraph Co.: Provision of Basic Services Via Resale by Separate Subsidiary CC Docket No. 83-1375.

Adopted June 27, 1984.

Released: July 11, 1984.

By the Commission.

I. Introduction

1. The Notice of Proposed Rulemaking in this proceeding [1] (*Notice*) proposed to allow American Telephone and Telegraph Co. (AT&T) to provide basic services via resale through its separate subsidiary formed pursuant to the *Second Computer Inquiry*.[2] That subsidiary is currently called AT&T Information Systems (ATTIS). All of AT&T's offerings of customer-premises equipment (CPE) to end users and enhanced services are through ATTIS. In the *Second Computer Inquiry*, we barred that subsidiary from owning transmission facilities or providing common carrier (basic) services. The *Notice* sought information with which we could evaluate the costs and benefits of lifting the prohibition on ATTIS providing basic services via resale [3] of some or any services of common carriers.

2. The *Notice* responded, in part, to a January 1983 letter from AT&T in which it sought authorization for its regulated interexchange carrier, AT&T Communications (ATCOM), to provide receive-only earth stations peforming certain functions. We found that these earth stations are CPE and that AT&T's request did not satisfy the standards for us to grant a waiver of the *Second Computer Inquiry*.[4] As a separate matter, AT&T filed a petition in February 1984 seeking waiver of the *Second Computer Inquiry* restrictions on ATTIS so that it could offer both CPE and basic services via resale to multi-tenant commercial buildings and complexes, *i.e.*, participate in the "telecommunications-enhanced real estate (intelligent building) marketplace."[5] We consolidate that petition with this proceeding. There were two other related requests by AT&T. In September 1982, AT&T filed a petition requesting forbearance from regulating ATTIS' basic, resold services in response to our decision in the *Competitive Carrier Rulemaking* to forbear regulating various resellers.[6] Recently, AT&T filed a petition to eliminate the structural separation requirements of the *Second Computer Inquiry*.[7]

3. As we will explain *infra*, three major factors have changed since the Commission decided to bar ATTIS from providing basic services via resale in 1980. First, structural separation of ATCOM's basic services from ATTIS' CPE and enhanced services has been achieved, and we have had experience with regulating ATCOM's offerings of basic services to check potential discrimination favoring ATTIS' CPE and enhanced services. Second, the number of suppliers of basic services has increased, including many resellers of ATCOM's services who can provide basic services in the same way that ATTIS would. Third, ATTIS' market power in CPE has declined with greater competition for new installations, a smaller share for ATTIS of the installed base, and the Commission's price protection program. As developments which might affect the costs and benefits flowing from a set of regulatory

[1] 49 FR 1248 (January 10, 1984).

[2] 77 FCC 2d 384, 474, *recon.*, 84 FCC 2d 50 (1980), *further recon.*, 88 FCC 2d 512 (1981), *aff'd sub nom.* Computer & Communications Indus. Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 103 S.Ct. 2107 (1983). The decision to bar the separate subsidiary from providing basic transmission services cited concerns about cost shifting from nonregulated to regulated activities. 77 FCC 2d at 474.

[3] We declared common carriers' tariff restrictions on resale unlawful in Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC 2d 261 (1976), *recon.*, 62 FCC 2d 588 v. FCC, 572 F.2d 17 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978); Resale and Shared Use of Common Carrier Domestic Public Switched Network Services, 83 FCC 2d 167 (1980).

[4] Letter to Chief, Common Carrier Bureau from A. Green, AT&T (January 19, 1983); AT&T: Request for Clarification of Computer II Requirements Concerning Earth Stations, FCC 83-603 (released January 13, 1984).

[5] ATTIS Petition for Expedited Grant of a Waiver and Forbearance of Title II Regulation (February 2, 1984) (*ATTIS Petition*). We received pleadings on this petition from Allnet Communications Services, Independent Data Communications Manufacturers Association (IDCMA), Association of Long Distance Telephone Companies (ALTEL), GTE Service Corp., North American Telecommunications Association (NATA), and ROLM Corp. The latter two requested consolidation of this petition with the proceedings in this docket. We also received a letter on ATTIS' request from United Technologies Building Systems (March 21, 1984), which was responded to by ALTEL (March 29, 1984).

[6] AT&T Petition for Reconsideration in CC Docket No. 79-252 (September 27, 1982). *See* Competitive Carrier Rulemaking, 91 FCC 2d 59 (1982), *recon.*, 93 FCC 2d 54, 61 and n. 17 (1983).

[7] Petition of AT&T for Relief from Structural Separation Requirements, Docket No. 20828 (April 30, 1984) (*AT&T Petition*).

practices occur, we have the responsibility to evaluate the impacts of those practices, consider whether they best promote the public interest, and eliminate unnecessary regulatory burdens. *Geller* v. *FCC*, 610 F. 2d 973, 980 (D.C. Cir. 1979); *Nader* v. *FCC*, 520 F. 2d 182, 205 (D.C. Cir. 1975). The action we take today is in accord with our desire to impose only the minimum structural separation and associated restrictions necessary to address our regulatory concerns regarding cross-subsidization and anticompetitive conduct. *Second Computer Inquiry*, 77 FCC 2d at 476. We recognized in the *Second Computer Inquiry* our obligation to adjust the conditions ordered there as experience and changed circumstances warrant. *Id.* at 463.

4. The decision we reach here is based on consideration of the record developed in this proceeding,[8] in the Inquiry on *Long-Run Regulation of AT&T's Basic Domestic Interstate Services*,[9] and in connection with AT&T's September 1982, January 1983, February 1984, and April 1984 requests. We conclude that the public interest will be served by authorizing ATTIS to provide basic domestic services via resale. By this Order, ATTIS can resell the domestic, interstate services of any carrier, including any of the domestic, interstate, tariffed services of an affiliated carrier (*e.g.*, ATCOM). This authorization is subject to: two reporting requirements on ATCOM; the restriction that ATCOM's offerings used by ATTIS be made available by ATCOM through nondiscriminatory tariffs; and the requirement that ATTIS use just, reasonable, nondiscriminatory, and unbundled offerings for its basic services. We will forbear from tariff and section 214 regulation of ATTIS' basic, domestic, interstate, resold services. We expect that consumers will benefit from more efficiently supplied products and services, innovative offerings, and increased competition. We are confident that our regulatory controls and market forces will assure that the basic services of ATCOM and ATTIS are offered with just, reasonable, and nondiscriminatory terms and rates.

II. Anticipated Public Benefits and Costs of ATTIS Providing Basic Services Via Resale

5. The *Notice* sought to develop a record on the public benefits and costs of authorizing ATTIS to provide basic services via resale.[10] As discussed in the *Notice*, this step may enable ATTIS to improve the quality and prices of services and products available to consumers. It is a goal of the Communications Act that the people of the United States have available rapid, efficient telecommunications services at reasonable charges, 47 U.S.C. 151. We expect that ATTIS will be able to develop innovative, efficient combinations of basic services with CPE and enhanced services through single-vendor design, installation, operation, and maintenance. Also, it is likely that ATTIS will develop innovative, efficient arrangements for sharing basic services. Furthermore, we believe that ATTIS' entry into basic services via resale will stimulate competition in a wide range of activities. On the other hand, the *Notice* expressed concern over possible discriminatory practices by ATCOM favoring ATTIS, and the possiblity that ATTIS would acquire market power in basic services. We recognized that allowing ATTIS to provide basic, resold services would not necessarily increase cross-subsidies or anticompetitive leverage, and we sought comments on the likelihood that these problems would emerge and regulatory tools to combat them.

6. *Benefits.* AT&T's pleadings, petitions, and letter describe three types of gains from ATTIS providing basic services via resale. We find that these benefits are reasonably likely to occur.

7. First, certain consumers will benefit if ATTIS can meet their demands for an integration of CPE, enhanced services, and basic services on a single-vendor basis, *i.e.*, "one-stop shopping" and "single-system management." Single-vendor supply can reduce customers' costs of selecting optimal interconnected offerings, obtaining them, and keeping them operational.[11] We reaffirm our conclusion in the *Second Computer Inquiry* that, generally, structural separation of CPE and enhanced services from basic services does not impair innovation or create large costs.[12] In many cases, customers combine telecommunications products and services from different vendors to obtain price/quality combinations superior to single-vendor offerings. On the other hand, the examples discussed in the next paragraph support the finding that some customers can benefit from single-vendor supply of CPE, enhanced services, and basic services.

8. In analyzing the demand for "complete satellite network services," AT&T pointed to the customers' benefits from having one supplier with responsibility for determining a customer's needs; designing the optimal configuration of CPE, terrestrial and satellite transmission services, and network controllers; obtaining the necessary products and services; and

[8] The following parties filed comments and or reply comments in CC Docket No. 83-1375: ATTIS, National Telecommunications and Information Administration (NTIA), The Federal Executive Agencies, Public Services Commission of Wisconsin, International Business Machines Corp. (IBM), NATA, Association of Data Processing Services Organization (ADAPSO), IDCMA, International Communications Association (ICA), J.C. Penney Co., ALTEL, MIC Telecommunications Corp., GTE Service Corp., Satellite Business Systems (SBS), Telesphere Network, Inc., RCA Comunications Inc., ITT World Communications Services, Inc., Allnet Communication Services, Inc., U.S. Telephone Inc., Lexitel Corp., American Satellite Co., FMX Telecom, ISACOMM, Inc., Teltec Savings Communications Co. and Satelco Inc., TelaMarketing Communications, Inc., ROLM Corp., Tandy Corp., Southwestern Bell Corp., BellSouth Corp., and the companies of U.S. West, NYNEX, Pacific Telesis, and Bell Atlantic. Microtel and SouthernTel filed late comments.

[9] 48 FR 51340, 51348 (November 8, 1983). Parties commenting specifically on the issue of ATTIS resale in this proceeding are Lexitel, MCI, IDCMA, ROLM, NATA, and ABC, CBS and NBC. Comments of the U.S. Department of Justice, MCI, and others recommended a substantial reduction in the regulatory filing requirements on AT&T. Reply comments of the National Cable Television Association, GTE Service Corp., Satellite Business Systems, and others stated concerns about cost shifting, cross-subsidization, and anticompetitive conduct by AT&T

[10] 49 FR at 1249-50. We do not apply the standard for waivers of the *Second Computer Inquiry's* restrictions (Computer II Requirements Concerning Earth Stations, *supra*, at 4) to this rulemaking. Rather, we weigh the possible costs and benefits of lifting the bar on ATTIS providing basic, resold services in this rulemaking. In the *Second Computer Inquiry*, we recognized our obligation to perform this type of reevaluation of the structural separation conditions and associated restrictions based on our experience and change of circumstances. 77 FCC 2d at 463, 476. We find that changed market conditions and our experience with structural separation between ATTIS and ATCOM warrant modifying the cost-benefit analysis applied to this issue in the *Second Computer Inquiry* and adjusting the restrictions imposed on ATTIS in that proceeding. *See* para. 3 *supra*. *See also* para. 33 *infra* on why we do not authorize resale by the Bell Operating Companies' separated subsidiaries in this Order.

[11] *See generally* Williamson, *Transaction Cost Economics: The Governance of Contractual Relations*, 22 J.L. & Econ. 233 (1979); O. Williamson, Markets and Hierarchies (1976). We recently recognized that consumers may benefit from having available packages of services (services with end-to-end capability) in addition to services in "building block" form. Private Line Rate Structures and Volume Discount Practices, 49 FR 18107, 18111-13 (April 27, 1984); AT&T: Picturephone (R) Meeting Service, 89 FCC 2d 1017, 1025 (1982). *See also* antitrust cases on benefits to consumers from allowing firms to offer their products and services by tying and packaging, *e.g.*, Jefferson Parish Hospital District No. 2 v. Hyde, 52 U.S.L.W. 4385 (March 27, 1984); Broadcast Music, Inc. v. CBS, 441 U.S.1 (1978) (aggregate sale of ostensibly separate items that serves to improve the quality of the product offered by the seller); United States Steel Corp. v. Fortner Ent., 429 U.S. 610, 612 n.1 (1979); United States v. Jerrold Electronics Corp., 187 F.Supp. 545 (E.D. Pa. 1960), *aff'd per curiam* 365 U.S. 567 (1961).

[12] 77 FCC 2d at 465-66, 482. *See also* AT&T: Computer II Requirements Concerning Earth Stations, *supra*.

installing and maintaining the system.[13] The existence of vendors of these integrated packages—most domestic satellite carriers—evidences benefits from such integrated supply for some customers. Along these lines, we recently recognized that consumers are likely to benefit from allowing International Business Machines (IBM) and Satellite Business Systems (SBS) to market their products jointly rather than requiring their customers to piece together their offerings.[14] The Federal Executive Agencies commented that their "past experiences have demonstrated that there are significant improvements in service quality and responsiveness when one supplier can bear end-to-end responsiblity for a service." [15] AT&T's April 1984 petition included a portion of Caterpillar Tractor Company's Request for Proposal for a single supplier of equipment and services to meet its Peoria area telecommunications needs.[16] AT&T also cited the demand for single system providers of full-service-communications-and-building-management packages, including the new "teleport" concept.[17]

9. Of course, firms not affiliated with AT&T can supply customers with much the same type of one-stop shopping and single-system management as could ATTIS if we lifted this prohibition. These firms are now able to resell carriers' services, including those of ATCOM,[18] on the same terms as ATTIS could, and combine these services with offerings of CPE and enhanced services. Also, some suppliers that own transmission facilities can provide even more integrated offerings than ATTIS could through resale. Yet, consumers will benefit from allowing ATTIS to supply a broader range of interconnected offerings. Consumers would have ATTIS' CPE, enhanced services, and expertise available on a single-vendor basis, and are likely to benefit further from increased competition (see para. 12 *infra*). Currently, ATTIS can help its customers select and order basic services and manage an integration of CPE, basic services, and enhanced services. But, allowing ATTIS to resell basic services would increase its ability to offer an integration of products and services by permitting it to obtain basic services in its own name, and to divide and shift them among its customers to meet their changing needs with less cost and delay than would accompany separate orders.[19] It is reasonable to anticipate that resale would add substantially to the quality and lower the price of ATTIS' offerings of integrated products and services.

10. AT&T's pleadings describe a second type of public benefit from lifting this bar—ATTIS could decrease the transaction costs for multiple customers to use jointly CPE, enhanced services, and basic services. Joint-use arrangements could foster innovative, efficient combinations of these offerings and uses of telecommunications facilities.[20] For example, ATTIS' proposed jointly-used tenant services would combine a PBX with resold basic services for multiple tenants in an office building.[21] In many cases, a large, jointly-used PBX can give tenants more features at a lower per-tenant price than if each tenant separately obtained CPE. Similarly, each tenant's total usage costs for basic services can also drop through joint usage. The PBX could route calls among various basic services which were selected to meet the tenants' demands at minimum costs; the PBX also could perform the accounting and billing for each tenant's use of the basic services. ATTIS claims that the gains from this joint use would not occur if a single supplier could not assess the tenants' needs for PBX features and basic services; obtain and program a PBX to meet those demands, including for optimal routing among the basic services selected; obtain and provide the basic services; organize the tenants; and adapt the operation of the PBX-and-services system as tenants' demands and services' prices change. Another illustration described by ATTIS involves inquiries it received from large businesses seeking jointly to use basic private line transmission services (Electronic Tandem Networks and Distributed Communications Systems) without losing the advantages of their dedicated systems.[22] Many large users

[13] Letter to Chief, Common Carrier Bureau from A. Green, AT&T (January 19, 1983). Comments filed in response to that letter by R. R. Donnelly and Sons Co. and the American Satellite Co. generally supported AT&T's request. We did not dispute the claimed benefits from single-vendor supply for these customers. Rather, we found that there were a number of vendors offering single-vendor supply for these customers and that the costs of allowing ATCOM to supply this CPE outweighed the benefits. AT&T: Computer II Requirements Concerning Earth Stations, *supra*.

[14] Satellite Business Systems' Petition to Modify Conditions of Authorization, ENF-83-16, at 10 (adopted May 10, 1984) ("SBS would have more flexibility to meet consumer needs, and be able to lower its marketing costs and compete more effectively with other carriers.").

[15] Comments in CC Docket No. 83-1374 of the Federal Executive Agencies at 3; NTIA at 4 ("The public can be expected to benefit from improved access to the offerings of a major telecommunications supplier."). Of course, without authority to own transmission facilities, ATTIS cannot operate as a completely integrated end-to-end system manager. Still, authorizing ATTIS to provide basic, resold services would be a substantial advance for ATTIS' customers in this direction.

[16] *AT&T Petition* at 43-44. Caterpillar's request does not state that its supplier must provide basic services via its own transmission facilities.

[17] *Id.* at 44. According to AT&T, (1) One Park Place, One South Wacher, and 333 West Wacker in Chicago, Unitedbank Plaza in Houston, and the Galleria in Dallas employ complete shared services packages; (2) at least nine teleports are under construction; and (3) suppliers include United Business Communications, Inc., Lincom Corp., TEL-Management Corp., CP National, and SBS Realcom.

[18] Our regulatory controls to promote nondiscriminatory use of ATCOM's services are described in the next section.

[19] *See* letters filed in CC Docket No. 83-1147 supporting changes in the regulation of AT&T to decrease the time and cost necessary for AT&T to offer new services: Prudential-Bache Securities (May 15, 1984); FoxMeyer Drug Co. (May 16, 1984); Computer, Inc., Alliance Insurance Co., Farmers Alliance Insurance Co., Iowa Public Service Co. (May 17, 1984); Kaiser Aluminum and Chemical Corp., Cargill, Inc. (May 18, 1984). *See also AT&T-IS Will Coordinate Maintenance of its Equipment and Customer Lines Under Plan*, 50 Telecom. Rpts. (June 11, 1984) 28.

[20] *See, e.g.* Resale and Shared Use of Common Carrier Domestic Public Switched Network Services, *supra*, 83 FCC 2d at 172, 180-82.

[21] *ATTIS Petition* at 6-12.

[22] ATTIS Comments in CC Docket No. 83-1375 at 9-10. There have been two recent examples showing AT&T's perception of demand for shared basic services. ATCOM filed a tariff for a new packet switched service, ACCUNET Packet Service, proposing "a shared packet network, with both the packet switches and trunks being shared among users. Accordingly, customers would no longer be responsible for providing their own trunks between switches." AT&T Communications Transmittal No. 59 (March 21, 1984). Application No. 30 (February 21, 1984). ATCOM described packet switching services as highly competitive, including some established competitors with extensive networks, expertise, and resources, *e.g.*, GTE Telenet, Tymnet, Uninet, Autonet, Compuserve, Safelink, RCA Cylix, MCI Mail Packet, Graphnet, ITT FaxPak, and IBM Information Network. AT&T Communications Transmittal No. 59, *supra*, at Attachment A. AT&T stated that it has letters of intent to use ACCUNET Packet Service from four customers other than ATTIS. Reply Comments of AT&T regarding Transmittal No. 59 at 5 (April 26, 1984). IBM's Petition to Suspend and Investigate the ACCUNET tariff (April 16, 1984) states that this offering should be provided by ATTIS, not ATCOM. IBM agrees with ATCOM's assessment of strong competition in these offerings. This tariff has not become effective.

In a related matter, on September 21, 1983, ATCOM filed Transmittal 14364 proposing to offer a special billing arrangement to permit shared use of its EPSCS (Enhanced Private Switched Communications Service) network. This billing service would enable ATCOM to identify the traffic of individual sharing customers so that they can be separately billed. ATCOM withdrew this filing on December 19, 1983, by Transmittal No. 14422; Common Carrier Bureau Mimeo No. 1431 (released December 21, 1983). *See also* AT&T Communications Transmittal No. 38 (February 14, 1984) proposing to withdraw its Billing Allocation Arrangement from its Tariff F.C.C. No. 3; Common Carrier Bureau Mimeo No. 3193 (released March 28, 1983). North American Philipps Corp. supported ATCOM's proposed Billing Allocation Arrangement as representing "competition in its truest form: customer demands for new and varied forms of service have been met by an innovative carrier response to such demands" (comments filed April 4, 1984). This tariff has not become effective.

lack the expertise or desire to arrange for sharing on their own. With resale, ATTIS could supply the CPE and enhanced features used for these services in an optimal configuration for the multiple customers and their transmission services; select, obtain, and provide the transmission services and modify their configuration and amounts in light of changing demands and prices; and perform maintenance, accounting, and billing.

11. Again, other firms have implemented the joint use arrangements contemplated by ATTIS, some with more integration through ownership of transmission facilities. Perhaps ATCOM will offer other such services to help meet this demand.[23] Yet, consumers will gain from ATTIS supplying a larger range of services along with its CPE and enhanced services, including integrations of products and services that ATCOM could not offer as basic services. Currently, ATTIS can promote joint use by organizing customers and helping them select and order services. But, allowing ATTIS to resell services would increase its capabilities in this regard by permitting it to obtain basic services in its own name and shift them among its customers to meet their changing needs with less cost and delay than would accompany separate orders. It is reasonable to anticipate that resale would add substantially to the quality and lower the price of ATTIS' offerings of jointly-used products and services, and promote efficiency in the use of basic services by subscribers.[24] Also, ATTIS' expanded capabilities in these activities are likely to stimulate competition (see para. 12 *infra*).

12. Third, ATTIS' entry into resold basic services is likely to stimulate competition in CPE, enhanced services, basic services, and packages of these products and services. ATTIS will thereby raise the quality and lower the prices of telecommunications products and services. This Commission is strongly committed to promoting competition in telecommunications products and services.[25] The *Notice* and comments of opponents to ATTIS providing basic, resold services discussed the possible competitive harms from practices by which ATCOM might confer on ATTIS market power or might engage in discriminatory preferences. These possible costs will be evaluated in paras. 15–26 *infra*. As shown *infra*, we can be reasonably confident that ATCOM could not employ such harmful practices; then, ATTIS' entry into basic, resold services is likely to increase competition in a wide range of products and services.[26] ATTIS' broader range of services might expand the types of products and services available to consumers. Even if ATTIS' offerings are not distinct, it may be an efficient supplier of low price/high quality products and services. *See* paras. 8–11 *supra*. Other suppliers would be forced by this new competition to increase their attractiveness to consumers with lower prices, higher quality, and innovative offerings. Providing enhanced services, supplying resold basic services, and (with our price-predictability program) distributing CPE are competitive activities.[27] There is also strong competition in packages of these offerings.[28] While ATTIS' entry into basic, resold services may increase its share of CPE and enhanced-services sales, such expansion (given our regulatory protection against abuses of market power or other exclusionary conduct) is the essence of competition and not detrimental to consumers.[29]

13. To summarize this discussion of benefits, we find that authorizing ATTIS to provide basic, resold services is likely to result in public benefits from (1) increased efficiency in one-stop shopping and single-system management for some customers, (2) increased efficiency in multi-customer sharing of basic services, and of CPE or enhanced services combined with basic services, and (3) increased competition. While we reasonably expect substantial benefits, we cannot (and need not) anticipate all the benefits that may flow to consumers from lifting the ban on ATTIS providing basic, resold services.[30] We conclude that, together with the low expectation of costs discussed in paras. 15–26 *infra*, the expected benefits justify expanding the range of ATTIS' authorized activities to include basic, resold services.

14. Denying ATTIS the authority to resell some or all of ATCOM's services would limit the public benefits from ATTIS' basic resold services.[31] Several

[23] We encouraged ATCOM to adopt tariff changes to accommodate smaller user. *See* AT&T: Basic Packet Switching Service, 94 FCC 2d 48, 60 (1983).

[24] *See* note 19 *supra*.

[25] *See, e.g.*, Private Line Rate Structure and Volume Discount Practices, *supra;* Competitive Carrier Rulemaking, 48 FR 52452 (November 18, 1983); Domestic Fixed-Satellite Transponder Sales, 90 FCC 2d 1238 (1982), *aff'd sub nom.* Wold Communications v. FCC, D.C. Cir. No. 82–2054 (June 1, 1984). *Second Computer Inquiry, supra;* Domestic Communications Satellite Facilities, 35 FCC 2d 844 (1972); Specialized Common Carrier Services, 29 FCC 2d 870 (1971), *aff'd sub nom.* Washington Utilities and Transportation Comm'n. v. FCC, 513 F.2d 1142 (9th Cir.), *cert. denied*, 423 U.S. 836 (1975).

[26] *See, e.g.*, comments in CC Docket No. 83–1375 of ATTIS at 2; IBM at 13. Other suppliers today are free to provide basic services—via resale or their own transmission facilities—in conjunction with CPE and enhanced services.

[27] *See Second Computer Inquiry*, 77 FCC 2d at 433, 440; Competitive Carrier Rulemaking, 91 FCC 2d 59, 67–70 (1982), *recon.*, 93 FCC 2d 54 (1983), 48 FR 52452, 52460 (November 18, 1983); Detariffing of CPE, FCC 83–551, at 27 (released December 15, 1983). The price-predictability program limits ATTIS' ability to raise the prices for its installed (embedded) CPE or to make installed CPE unavailable to certain customers. The sale program and limit on lease rates during the transition period were designed to protect against possible customer dislocations from sudden detariffing. *Id.* at 25–30. Competition in CPE manufacturing and retailing should continue to increase during the price-predictability program. Also, ATTIS' sales program is cutting into the share of embedded CPE owned by ATTIS. We expect that ATTIS will lack market power in CPE after the price-predictability program terminates. ROLM estimated that ATTIS has only fifty percent of the installed CPE customer base, ROLM Reply Comments in CC Docket No. 83–1375, at 4. *See also* Detariffing of CPE, *supra*, at 27 n. 32. NATA estimated that there are 2,000–2,500 equipment vendors in the United States, with "rampant price competition." NATA, 1983–1984 Telecommunications Source Book at 106. According to NATA's estimates, the non-AT&T suppliers accounted for about 61 percent of PBX shipments and 57 percent of key-set shipments in 1982. *Id.* at 109–21. NATA estimated that in 1979 non-AT&T suppliers accounted for about 50 percent of PBX shipments and 38 percent of key-set shipments. According to NATA, the Bell System's share of installed base declined from 1978 to 1982, by from about 63 to 56 percent for PBXs, and from about 76 to 71 percent for key sets. *Id.* Another survey estimated that there are 3,000 firms supplying CPE for voice communications, ATTIS will supply only 29% of CPE for voice communications, and AT&T Technologies will account for only 31% of PBX line shipments in 1984. *Composite Telecom Industry Poised to Spend $31 Billion in 1984*, Telephony (January 16, 1984) 34, 49. We believe that ATTIS faces strong competition for new single-line CPE, and that its share of such installed equipment is declining. *See* Detariffing of CPE, *supra*, para. 4 & n. 8, para. 69 & n. 63.

[28] *See* note 22 *supra;* Resale and Shared Use of Common Carrier Domestic Public Switched Network Services, *supra*, 83 FCC 2d at 160.

[29] *See, e.g*, Foremost Pro Color, Inc. v. Eastman Kodak Co., 703 F.2d 534, 546 (9th Cir. 1983) ("that the dominant firm in any market may, through technological innovation, expand the market share, increase consumer brand identification, or create demand for new products is perfectly consistent with the competitive forces that the Sherman Act was intended to foster"); Hirsh V. Martindale-Hubbell, Inc., 674 F.2d 1343, 1348 (9th Cir. 1982); Northeastern Tel. Co. v. American Tel. & Tel. Co., 651 F.2d 76, 93 (2d Cir. 1981), *cert. denied*, 455 U.S. 943 (1982); California Computer Products v. IBM, 613 F.2d 727, 744 (9th Cir. 1979); Berkey Photo, Inc. v. Eastman Kodak Co., 603 F.2d 263, 286 (2d Cir. 1979), *cert. denied*, 444 U.S. 1093 (1980); Telex Corp. v. IBM, 510 F.2d 894, 926 (10th Cir.), *cert. dismissed*, 423 U.S. 802 (1975).

[30] *See* Graphnet Systems, 71 FCC 2d 471, 523 (1979).

[31] The *Notice* discussed three alternatives for authorizing ATTIS to provide basic, resold services: (1) Resale of any service supplied by an unaffiliated carrier; (2) resale of services of any unaffiliated carrier and any satellite service supplied by an affiliated carrier (including ATCOM) as long as that service is available on unbundled, nondiscriminatory basis; and (3) resale of services of any unaffiliated carrier and any service supplied by an affiliated carrier on an unbundled, nondiscriminatory basis. 49 Fed. Reg. at 1249, 1250–

Continued

commenters stated that there are no or few alternative suppliers of close substitutes for some of ATCOM's services.[32] If these claims are true, the range of ATTIS' offerings would be limited by a bar on ATTIS reselling those ATCOM services; ATTIS could not obtain close substitutes from unaffiliated carrier. In addition, the combination of barring ATTIS from reselling some or all of ATCOM's services, barring ATTIS from owning transmission facilities, [33] and the incomplete national availability of many Other Common Carriers' (OCCs') facilities [34] would limit the geographic areas where ATTIS could provide certain offerings. We seek to promote the widest possible availability of the public benefits from ATTIS' basic, resold services, consistent with the goal expressed in 47 U.S.C. 151. Restrictions on ATTIS' authority to resell ATCOM's services would constrict the competitive stimulation we expect from our decision today. Finally, any such restriction on ATTIS' authority to resell ATCOM's services would be difficult to administer. Limiting ATTIS' resale to only non-ATCOM services would be difficult to enforce because most OCCs resell some of ATCOM's services. Limiting ATTIS' resale to only certain ATCOM services would be difficult to enforce because ATCOM's services and facilities are intermingled, *e.g.*, some services can be provided by satellite or terrestrial facilities, or both. Paras. 18–22 *infra* discuss the Commission's ability to control through regulation the types of possible costs at which the limited-resale options were directed.

15. *Costs.* The *Notice* and comments point to several types of potential public costs from ATTIS supplying basic services via resale.[35] Much of the opposition to lifting the ban comes from competing CPE suppliers and OCCs. Some commenters also point to the problems of increased regulatory involvement with ATTIS. Close regulatory scrutiny of ATTIS' rates would be necessary to protect customers from being charged supracompetitive prices only if ATTIS gained market power in basic services.[36] Also, close regulatory scrutiny of ATTIS' practices then would be necessary to protect competition only if ATTIS gained market power. The *Second Computer Inquiry* adopted structural separation, *inter alia*, to promote effective rate-base regulation (limit cost shifting from a firm's competitive activities to its regulated, monopoly activities) and to limit opportunities for discriminatory, exclusionary abuses of market power. The issue here is whether it is reasonable to believe that ATTIS will gain the ability to shift costs from unregulated to regulated activities and to engage in anticompetitive practices by providing basic, resold services; such ability could undermine many of the benefits of the *Second Computer Inquiry's* structural separation.[37] We conclude that our regulatory controls make it unreasonable to anticipate these costs.

16. Regarding ATTIS' acquisition of market power in basic services, opponents of ATTIS resale claimed that (1) ATCOM could design its service offerings so that ATTIS resold a large share of some or all of ATCOM's services; [38] (2) ATCOM could encourage migration of its customers to ATTIS; (3) ATCOM could discriminate in favor of ATTIS in price, quality, maintenance, and installation of its basic services used for resale; and (4) ATTIS could bundle its "monopolized" CPE with its basic services and thereby reduce competition in basic services. Furthermore, some commenters claimed that ATTIS resale will increase exchange bypass. We take these concerns seriously and will explain carefully our regulatory safeguards against possible harms to the public interest from allowing ATTIS to provide basic, resold services. In light of these regulatory safeguards, we do not believe that ATTIS will acquire market power in basic services, or be able to engage in cross-subsidization or anticompetitive conduct. Therefore, we do not believe that it is necessary to restrict ATTIS' basic services to resale of unaffiliated carriers' services, or to those services plus some of ATCOM's services.

17. Three regulatory tools will be applied to protect against ATCOM designing its services and procedures so that ATTIS acquires a large share of its capacity and customers, or gains preferences by discriminatory offerings: (1) Review of ATCOM's tariffs; (2) complaints against ATCOM or ATTIS; and (3) two reports to be filed by ATCOM.

18. Our primary tool will be review of ATCOM's tariffs.[39] ATCOM is regulated as a dominant carrier and must file cost-supported tariffs.[40] The Commission has

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51. Several commenters argued that any authority for ATTIS to provide basic, resold services should be restricted to unaffiliated carriers for at least a period during which we can gain experience with ATTIS' expanded range of activities. For the reasons discussed *infra*, we do not believe that the dangers of cross-subsidization and anticompetitive conduct with these commenters use to justify this restriction will materialize. Furthermore, such restriction will deprive consumers of certain benefits of ATTIS resale.

[32] *See, e.g.*, comments in CC Docket No. 83–1147 of U.S. Department of Justice and Ad Hoc Telecommunications Users Committee (limited substitutes for ATCOM's 800 service); ADAPSO (limited substitutes for ATCOM's terrestrial private lines used in data communications and for 800 service); Association of American Railroads (setellite transmission limited substitute for AT&T's terrestrial services). We make no findings here on the relevant market(s) for evaluating ATCOM's power in its various services.

[33] We do not affect the bar on ATTIS owning transmission facilities by our action today.

[34] *See* comments in CC Docket No. 83–1147 of Rural Telephone Coalition (ATCOM is the sole provider of interLATA services which can be accessed in most rural areas.); Vermont Department of Public Service and Public Service Board (Reply) at 4–5 (no facilities-based competition yet to Vermont); National Association of State Utility Consumer Advocates and the Citizens of the State of Florida at 1 (little competition on low-volume routes). "To restrict AT&T–IS to resale of the offerings of only unaffiliated carriers may prevent AT&T–IS and the customer from selecting the facility best suited to a particular service need and would restrict AT&T–IS and its customers to resold services and systems based on a smaller variety of generally less ubiquitous basic services." ATTIS Comments in CC Docket No. 83–1375 at 20–21.

[35] *See, e.g.*, Comments in CC Docket No. 83–1375 of Tandy (Reply) at 18–19, IDCMA at 18–19, SBS at 7–11, ADAPSO at 16, RCA AT 6, U.S. Telephone at 11, GTE at 16–19 and (Reply) at 9–10, Lexitel at 10–14; Opposition to *ATTIS Petition* of ALTEL at 3–4, NYNEX at 1; Reply Comments in CC Docket No. 83–1147 of IDCMA at 16; ROLM at 5; Lexitel at 5–7.

[36] Market power is the ability profitably to charge prices above the competitive level. *See* Competitive Carrier Rulemaking, 48 FR 52452, 52454–55 (November 18, 1983). For ATTIS to possess market power, ATTIS would require a high share of sales in a relevant market, and its competitors would have to be limited in their ability to expand their output of substitutable services at costs comparable to those of ATTIS (barriers to entry and expansion).

[37] Some opponents claim that authorizing ATTIS to provide basic, resold services would generate all of the costs addressed by structural separation in the *Second Computer Inquiry*, *i.e.*, massive cross-subsidization and anticompetitive conduct. *See, e.g.* Comments in CC Docket No. 83–1375 of ADAPSO at 17, Bell Atlantic at 2, ROLM (Reply) at 9, NATA at 8–11, Tandy (Reply) at 16, Telesphere Network at 3, ITT World Communications Services at 1.

[38] The *Notice* discussed a service proposed by AT&T which appeared targeted for use by ATTIS' predecessor, AT&T: Basic (Bell) Packet Switching Service (BPSS), 91 FCC 2d 1 (1982), 94 FCC 2d 48 (1983).

[39] *See, e.g.*, comments in CC Docket No. 83–1375 of NTIA at 7, IBM at 6.

[40] 47 CFR 61.38. If adopted, the Commission's proposal to shorten tariff notice periods for all dominant carriers including AT&T would not sacrifice the ability of the tariff review process to identify and require changes to any unjust, unreasonable, or discriminatory tariffs proposed by ATCOM. Amendment of Sections 1 and 61 of the Commission's Rules, 95 FCC 2d 45 (1983). Furthermore, in CC Docket No. 83–1147, we are evaluating ATCOM's market power and what regulatory tools will best promote the public interest when applied to ATCOM. We may propose to regulate some or all of ATCOM's services without requiring tariffs. However, we would implement such a change only after finding that, in light of our complaint process and market forces, ATCOM could not charge unjust or unreasonable rates for such services, and could not discriminate against or in favor of any customer, including ATTIS.

an opportunity to review, and interested parties have an opportunity to comment on, ATCOM's tariffs before they go into effect. We can suspend and investigate ATCOM's tariff filings, and prescribe just and reasonable charges, regulations, and practices, 47 U.S.C. 201–205. ATCOM bears the burden of proving that its proposed tariffs are just, reasonable, and nondiscriminatory.[41] We have had experience in regulating ATCOM's offerings to ensure against discrimination favoring ATTIS when ATTIS in effect resells ATCOM's services to provide enhanced services; the existence of demand for ATCOM's offerings by other resellers and customers should check ATCOM's incentives and ability to discriminate in favor of ATTIS.[42] Through adoption of guidelines for private line services, we recently reaffirmed our commitment to ensuring that ATCOM's offerings are unbundled and do not discriminate among groups of customers.[43] Any private line volume discount offered by ATCOM must be available on a nondiscriminatory, unbundled basis which is either cost justified or reasonably designed to meet competition and promote reasonable rates for all of ATCOM's services.[44] We doubt that any volume discount offered by ATCOM for which ATTIS is the only customer would meet this standard for a lawful common carrier rate. Similarly, we would be suspicious of, and apply close tariff review to, any offering for which one customer (including ATTIS) accounts for a large share of total usage.[45] The reporting requirements described in para. 21 will assist in identifying such offerings. We will scrutinize closely ATCOM's tariffs to safeguard our policies favoring resale, sharing, and interconnection [46] by any user. In addition, we will require careful justification for any tariff provisions specifying a decline in service quality (*e.g.*, longer waiting periods to obtain service, more stringent service cancellation provisions, higher deposits, or fewer features [47]) Which may suggest a strategy of migrating customers from ATCOM to ATTIS.

19. As a further safeguard against the possibility that ATCOM may discriminate by dedicating facilities or services to ATTIS' use, we reaffirm the *Second Computer Inquiry's* prohibition on ATCOM supplying any services or facilities to ATTIS other than through general tariffed offerings.[48] This means that the same transmission facilities, service features, and procedures offered by ATCOM to ATTIS must be made available to all other resellers and other customers on the same terms and conditions.[49]

20. Second, our complaint procedure, 47 U.S.C. 208, is available to customers and competitors with claims that ATCOM discriminates in order processing, installation, maintenance, price, quality, or in any other way. In the *Second Computer Inquiry*, we stressed the importance of nondiscriminatory access to ATCOM's services for AT&T's separated subsidiary and all other customers.[50] Furthermore, ATTIS must operate independently from ATCOM in the furnishing of basic services, *e.g.*, separate marketing, facilities, and personnel.[51] Additionally, as a provider of basic, common carrier services subject to regulation under Title II of the Communications Act, ATTIS would be required to supply its basic services at just, reasonable and nondiscriminatory rates, 47 U.S.C. 201–202, comply with the *Second Computer Inquiry's* unbundling requirements,[52] and provide reasonable, nondiscriminatory interconnections to its basic services for CPE and enhanced services supplied by other vendors. Our complaint process is available to enforce these requirements on ATTIS.[53] We can investigate complaints against ATCOM's or ATTIS's practices, including their interconnection, resale, and duty-to-serve practices. If a rate or practice is found unlawful, the carrier may be liable for damages under 47 U.S.C. 206, and restrictions on ATTIS' provision of basic, resold services may be reimposed as a remedy.

21. Finally, we hereby require, at least on a temporary basis, that ATCOM file quarterly reports on two aspects of its provision of services to ATTIS.[54] First, ATCOM must identify any offering for which use by ATTIS accounts for over 50 percent of total monthly use. For purposes of this requirement, we define "offering" to be a specific volume or configuration of a service, or specific function or option associated with a service, or any other service feature for which there is a rate element or tariff term (*e.g.*, an ordering or termination procedure). This report will help identify areas which may warrant tariff or other Commission investigation, or, perhaps, revision of our decision to allow ATTIS to provide basic, resold services. Our concerns about possible discrimination apply equally to ATCOM's services used by ATTIS for basic or enhanced services. Furthermore, because ATCOM may be uncertain whether an order by ATTIS for a service is to be resold as a basic or enhanced service, this report should cover all orders by ATTIS for ATCOM's services. Second, ATCOM must report the average (mean and median) times for order processing, installation, and maintenance for ATTIS' orders—by WATS, 800 service, and private line service—and for orders of other customers for the same services. We are greatly concerned about ATCOM's current backlog in satisfying WATS, 800 service, and private line orders. [55] We recognize that this backlog

[41] 47 U.S.C. 204.

[42] *See* AT&T: BPSS, *Supra;* note 56 *infra.*

[43] Private Line Rate Structures and Volume Discount Practices, *Supra*, at 3–4.

[44] *Id.* at 23–32.

[45] *See* AT&T: BPSS, *supra;* AT&T: Series 9000 (R. R. Donnelley), 89 FCC 2d 1116 (1982).

[46] Our policy favoring reasonable, nondiscriminatory interconnection practices and charges between carriers is well established, pursuant to 47 U.S.C. 201–02. *See* Bell Systems Tariff Offerings, 46 F.C.C. 2d 413, 428 *aff'd sub nom.* Bell Telephone Co. of Pennsylvania v. FCC, 503 F.2d 1250 (3d Cir. 1974), *cert. denied*, 422 U.S. 1026 (1975); AT&T: Offer of Facilities to Other Common carriers, 92 F.C.C. 2d 46, *modified*, FCC 83–550 (released December 12, 1983); Cellular Communication Systems, 89 F.C.C. 2d 58, 81 (1982); Lincoln Tel. & Tel. Co., 72 F.C.C. 2d 724 (1979), *aff'd*, 659 F.2d 1092 (D.C. Cir. 1981); Interconnection Facilities Provided to the Int'l Record Carriers, 63 F.C.C. 2d 761 (1977); AT&T: Restrictions on Interconnection of Private Line Services, 60 F.C.C. 2d 939 (1976); Fort Mill Telephone Co. v. FCC, 719 F.2d 89 (4th Cir. 1983).

[47] *See generally* Investigation of Access and Divestiture Related Tariffs, FCC 84–51 (released February 17, 1984) (ECA Tariff Order).

[48] In CC Docket No. 83–1147, Telesphere Network's comments at 6 suggested the possible abuse of carrier-to-carrier contracts between ATCOM and ATTIS to evade regulatory scrutiny of the terms by which ATTIS uses ATCOM's services and facilities. NTIA's reply comments at 7 suggested that the Commission can eliminate this possible problem by requiring that ATTIS obtain all its transmission capacity from ATCOM under tariff. Recently, we proposed to require common carriers to provide special construction of lines and special service arrangements only as non-common carrier, non-tariffed offerings. Special Construction of Lines and Special Service Arrangements Provided by Common Carriers, FCC 84–146 (released April 30, 1984). If that proposal is adopted, under this Order ATCOM could not provide special activities to ATTIS. However, ATTIS could obtain special activities from unaffiliated carriers as long as ATTIS complies with the prohibition against ownership of transmission facilities.

[49] 77 FCC 2d at 474; 47 CFR 64.702(c)(1).

[50] 77 FCC 2d at 474.

[51] 47 CFR 64.702(c)(2).

[52] 77 FCC 2d at 439–40, 445–47, 475; 47 CFR 64.702(e). If ATTIS offers a basic service as part of a package with CPE or an enhanced service, it must also offer the basic service on a stand-alone basis.

[53] *See* AT&T: Notice of Apparent Liability, FCC 83–514 (released November 17, 1983) (penalty imposed for violation of structural separation conditions of the *Second Computer Inquiry*).

[54] IBM's comments in CC Docket No. 83–1375 at 8 n. 16 recommended that any reporting requirement be placed on ATCOM rather than ATTIS to avoid excessive regulatory entanglement with ATTIS.

[55] *See* Letters to D. Culkin, AT&T, from Chief, Common Carrier Bureau (June 7, 1984, and March 8, 1984): *AT&T Communications Pledges "Whatever It Takes" to Eliminate Present Service Problems in*

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creates opportunities and incentives for ATCOM to give preferential treatment to ATTIS' orders outside of its tariff provisions. This report, together with possible complaints of other ATCOM customers or ATTIS' competitors, will inform the Commission of such discrimination and help speed appropriate enforcement actions against ATCOM.

22. We are confident that these regulatory tools will provide sufficient protection for consumers against AT&T's potential use of ATCOM's services to discriminate against any OCC, to harm certain customers, or to confer market power on ATTIS. We will use these tools to ensure that ATTIS obtains MTS, WATS, private line, and other offerings from ATCOM on the same terms and conditions as do the many current resellers of ATCOM's services and other customers.[56] Similarly, with regard to fears that ATCOM's dealings with exchange carriers will benefit ATTIS' orders for exchange access, we will use our tariff-review and complaint processes to protect against any discriminatory treatment favoring ATTIS in exchange access. Exchange carriers are regulated as dominant carriers; their tariffs must be filed on 90-days notice with cost support.[57] Furthermore, the AT&T divestiture and the implementation of access tariffs ended the financial integration which might have given exchange carriers an incentive to discriminate in favor of ATTIS over other interexchange carriers. These protections limit the possible harm to competition and the consequential costs to consumers from ATTIS' entry as a supplier of basic, resold services. ATTIS' entry should not impair the services and terms offered by ATCOM and exchange carriers to end users or to ATTIS' rivals who supply CPE, enhanced services, or basic services.

23. Another claim is that ATTIS could exclude competition and charge supracompetitive prices for basic services by bundling its CPE with basic services, or by taking advantage of its CPE customer base to market basic services.[58] Given our price-predictability program for embedded CPE and the intense competition for sales of new CPE, we doubt that ATTIS has or will have market power in CPE.[59] Our price-predictability program limits ATTIS' ability to force its CPE customers—through threats of higher CPE prices or making its CPE unavailable—to take its basic services. Growing competition for new CPE sales and sales of installed CPE during this program should leave ATTIS unable to apply leverage from CPE to lessen competition in basic services after the program expires. CPE competition has changed from the market conditions that prevailed in 1980 when we adopted the *Second Computer Inquiry*. Still, this Order does not affect the bar on ATCOM bundling its basic services with CPE, or ATCOM discriminating in its rates or rate structures in favor of ATTIS' products and services.[60] Although as discussed *infra* we forbear from requiring certain filings by ATTIS, ATTIS will be subject to the provisions of section 202(a) prohibiting any unreasonable preference in its common carrier services to its CPE[61] or enhanced-services customers, 47 U.S.C. 202(a). In addition to its unbundled basic-service offerings, ATTIS could make packages of its basic-service and other offerings available for those customers who prefer one-stop shopping and single-system management. As explained *supra*, the availability of these packages would yield efficiencies to these customers. Yet, we do not believe that these packages will be a source of market power for ATTIS. We expect that a number of customers will demand joint services. If ATTIS lacks discriminatory use of basic services, we expect that ATTIS will face substantial competition from others in designing and operating such services.[62] ATTIS should not be able to use its CPE position to lessen competition in basic services, and vice versa. Nor should it be able to cross-subsidize one set of activities with revenues from the other.

24. Some commenters contend that authorizing ATTIS to provide basic services via resale will force the Commission to regulate ATTIS' cost allocations between its basic services and its CPE and enhanced-service activities. As explained in the next section, we conclude that it is in the public interest for us to forbear from requiring ATTIS to file tariffs or section 214 applications. Given the market forces which will check ATTIS' rates and practices, we do not expect to have to examine frequently ATTIS' cost support for its rates. We have not been required to engage in such rate-base regulation of any carrier subject to forbearance, either in response to a complaint or on our own initiative since we established forbearance in 1932. Our regulatory involvement in ATTIS' offerings is likely to be limited to the complaint process concerning, for example, discriminatory rates. Most of

Private Line, WATS, and "800" Service; FCC to Receive Monthly Reports For Duration, 50 Telecom. Rpts. (May 21, 1984) 4–6; Reply Comments in CC Docket No. 83–1147 of Lexitel at 6.

[56] Comments of ATTIS in CC Docket No. 83–1375 at 11 estimate that there are over 350 current resellers of ATCOM's services. At least six Other Common Carriers or resellers had interstate revenues exceeding $100 million in 1983 and supplied some of their services through resale of ATCOM's private line and WATS offerings. *Composite Telecom Industry Poised to Spend $31 Billion in 1984, supra*, at 49; data filed with the Commission pursuant to 47 CFR 43.21; comments of AT&T in CC Docket No. 83–1147 at Appendices A and B. In addition, there are many large customers with private or shared networks utilizing ATCOM's offerings who would be in a position to take some of ATCOM's offerings that are attractive to ATTIS.

[57] *See* Investigation of Access and Divestiture Related Tariffs, FCC 84–188 (released April 27, 1984), FCC 84–51 (released February 15, 1984), Mimeo No. 2802 (released March 7, 1984).

[58] *See, e.g.*, comments of IDCMA in CC Docket No. 83–1147 at 18–27, reply comments of Tandy Corp. in CC Docket No. 83–1375 at 13.

[59] *See* note 27 *supra*. In antitrust law, unlawful tying requires that the seller "has some advantage not shared by his competitors in the tying product." Fortner Enter. v. United States Steel Corp., 429 U.S. 610, 629 (1977); Jefferson Parish, *supra*, 52 U.S.L.W. at 4388 ("we have condemned tying arrangements when the seller has some special ability—usually called 'market power'—to force a purchaser to do something that he would not do in a competitive market").

[60] *See* AT&T: BPSS, *supra*, 94 FCC 2d at 64–65. We express no opinion here on the merits of the claims in *AT&T's Petition* that the structural separation of the *Second Computer Inquiry* should be removed. We do not require structural separation between ATTIS' provision of basic, resold services and its provision of CPE and enhanced services. Such structural separation could eliminate most of the anticipated public benefits from ATTIS providing basic resold services. *See* paras. 8–13 *supra*. We expect that ATTIS' market power in basic services will be far less than ATCOM's. Thus, our concerns about cost shifting and exclusionary conduct are far less for ATTIS than ATCOM. While we find that structural separation of ATTIS' CPE activities from its basic services would not be in the public interest, we do not affect the requirement that ATCOM's basic services be separated from AT&T's CPE offerings.

[61] Lexitel, in its comments in CC Docket No. 83–1375 at 13 and reply comments 6–8, claims that ATTIS will use information about its CPE customers to disadvantage OCCs and favor the services offered by ATCOM or ATTIS. *See also* reply comments CC Docket No. 83–1375 of Tandy Corp. at 13, NATA at 12 (citing ATTIS' enormous embedded base of CPE). Our concern about such conduct is less now than it was when we adopted structural separation for AT&T in the *Second Computer Inquiry* because AT&T's share of embedded CPE and new CPE supplied has declined greatly. *Supra* note 27. With the transfer of embedded CPE from the BOCs to ATTIS, ATTIS did not get access to information about the CPE customers' current transmission usage for marketing purposes. Detariffing of CPE, *supra*, paras. 120, 124. Numerous CPE suppliers and common carriers have been able to gain substantial market positions without access to ATTIS' information about its CPE customers. While ATTIS' information about its CPE customers may give it some advantage over certain suppliers of basic services, CPE, or packages, we do not believe that this advantage is substantial enough to give ATTIS market power in basic services, CPE, or packages.

[62] There are other suppliers of sharing-related services, including multitenant-building-shared services and teleports, note 17 *supra*, and barriers to entry into the management of shared telecommunications services are low. *See* Lexitel comments in CC Docket No. 83–1375 at 9.

these types of complaints would not involve cost allocations. Finally, if a claim of predatory pricing of basic services if filed against ATTIS, most of its costs for providing basic services should be readily identifiable—the rates it pays to the underlying carriers whose services it resells. Problems of allocating ATTIS' joint and common costs, if they arise, should be small. Our decision today will continue the ban on joint and common costs between ATTIS and ATCOM ordered by the *Second Computer Inquiry*. Furthermore, our decision here will not impede our efforts to determine the cost basis of ATCOM's rates. Note that the capitalization of ATTIS by ATCOM is limited, which restricts ATTIS' potential predatory strategies. *See* Enhanced Services Capitalization Order, 90 FCC 2d 404, 407–08 (1982); Detariffing of CPE, *supra*, paras. 194–96.

25. As a final consideration in assessing possible public costs, several commenters, particularly exchange carriers, claim that authorizing ATTIS to provide basic, resold services will increase bypass of exchange facilities. Illustrations are given in terms of ATTIS diverting traffic from MTS and WATS to shared use of ATCOM's private line services (which make a lower contribution to the costs of non-traffic sensitive (NTS) exchange facilities).[63] Through our access-charge rules [64] and review of access tariffs, we will look carefully at any opportunity for ATTIS to characterize and configure its MTS/WATS-like services so as to avoid paying switched access charges. Moreover, we have found in *MTS and WATS Market Structure* that limiting uneconomic bypass of the local switched network depends on implementing customer line charges or otherwise decreasing the NTS costs covered by usage rates for switched services.[65] We do not believe that restricting ATTIS' offerings while OCCs provide the same purportedly-undesirable services increases the long-term viability of exchange carriers and universal service. The speculative costs of the claimed increment in bypass from resale by ATTIS do not outweigh the public benefits we expect from ATTIS' new offerings.

26. In sum, we conclude that resale by ATTIS will not cause the harms addressed by the *Second Computer Inquiry* four years ago. The major safeguards of the *Second Computer Inquiry* remain unaffected by our action today, *e.g.*, the requirement that ATCOM's services be structurally separated from AT&T's CPE and enhanced services, the requirement that ATTIS deal with ATCOM on the same terms and conditions that other suppliers do, and the facilities-ownership bar on ATTIS. We expect that ATTIS will lack market power as a reseller of basic services, and we will regulate and monitor ATCOM's offerings to ensure that ATTIS is not unfairly advantaged by discrimination or other practices. With the price-predictability program for ATTIS' embedded CPE, we also expect that ATTIS will lack market power in CPE. In addition, ATTIS faces strong competition in enhanced services. All things considered, ATTIS should be unable to cross-subsidize any of its offerings, and it should be unprofitable for ATTIS to charge unreasonably high (monopolistic), unreasonably low (predatory), or discriminatory prices for any of its offerings. Nor should ATTIS be able profitably to engage in anticompetitive leverage (tying). Tariff review of ATCOM's offerings, our complaint process for ATCOM's and ATTIS' basic services, the reporting requirements on ATCOM regarding its services provided to ATTIS, and market forces should check any possible public costs from authorizing ATTIS to provide basic, resold services. We believe that the public has benefitted from ATTIS' provision of enhanced services, including the effective resale of ATCOM's basic services, through more intense competition in providing enhanced services and integrated offerings of CPE and enhanced services by ATCOM. We expect that the public benefits of allowing ATTIS to supply basic, resold services—including via any of ATCOM's tariffed offerings—will outweigh the public costs.

III. Forbearance Applied to ATTIS' Basic, Resold Services

27. In the *Competitive Carrier Rulemaking*, we decided to forbear requiring tariff filings and Section 214 facilities applications for all domestic, interstate services provided by resellers, as well as for services provided by specialized common carriers.[66] We found that our complaint process and market forces gave us sufficient certainty that resellers would charge just, reasonable, and nondiscriminatory rates for these services. Each reseller competes with other resellers as well as facilities-based carriers. The price a reseller can charge for an offering is checked by the ability of other resellers to supply a similar offering using similar services of a facilities-based carrier, as well as the ability of a facilities-based carrier to supply a similar offering itself. We concluded that all resellers that we analyzed are nondominant, but stated a possible exception for basic, resold services provided by ATTIS, which we had not analyzed.[67]

28. As stated *supra*, we expect that ATTIS will be non-dominant in its offerings of basic, resold services.[68] Under our regulation, ATCOM must provide to all customers, including all OCCs, nondiscriminatory terms and practices for using its services. We will also scrutinize ATCOM's offerings to detect and prevent any attempts to target a large share of ATCOM's facilities, or any of ATCOM's services, for resale by ATTIS. The same regulatory scrutiny will apply to interstate offerings of exchange carriers that ATTIS would resell. In addition, we doubt that ATTIS will be able to acquire market power in basic services, or in any package including basic services, by leverage from its CPE and enhanced services. Therefore, we expect that ATTIS will have a small share of basic, domestic, interstate, interexchange services, and will be a non-dominant carrier. The reporting requirements we impose on ATCOM (see para. 21 *supra*) will help us monitor ATTIS' growth as a reseller of basic services. If future market conditions so indicate, we retain the authority to re-categorize ATTIS as a dominant carrier and change its regulatory filing requirements, or to impose other safeguards.

29. In the *Competitive Carrier Rulemaking*, we chose to regulate non-dominant carriers either by streamlined regulation (tariffs filed on 14 days' notice without cost support; semi-annual reports on facilities) or by forebearance (no tariffs required to be filed; semi-annual reports on facilities).[69] All

[63] *See, e.g.*, comments in CC Docket 83–1375 of GTE at 18, Lexitel at 14, NYNEX at 1, Pacific Bell and Nevada Bell (Reply) at 3.

[64] MTS and WATS Market Structure (CC Docket No. 78–72, Phase I), 93 FCC 2d 241, *recon.*, FCC 83–356 (released August 22, 1983), *further recon.*, FCC 84–36 (released February 15, 1984).

[65] *Id.*

[66] 91 FCC 2d 59 (1982) (Second Report), *recon.* 93 FCC 2d 54 (1983), 48 Fed. Reg. 52452 (November 18, 1983) (Fourth Report).

[67] 93 FCC 2d at 61 and n. 17.

[68] In the Fourth Report in the *Competitive Carrier Rulemaking*, we found that a relevant market is all domestic, interstate, interexchange telecommunications services. 48 FR 52456.

[69] Some commenters state that we should apply to ATTIS full regulation (tariffs filed on 90-days' notice with cost support; section 214 applications for each line acquired for resale). *See, e.g.*, comments in CC Docket No. 83–1375 of Tandy Corp. (reply) at 20–28, NATA at 5–6. IDCMA favored streamlined regulation of ATTIS' basic, resold services over forebearance. IDCMA Comments in CC Docket No. 83–1375 at 24–27. *But see* comments in CC Docket 83–1375 favoring forbearance of NTIA at 9, IBM at

Continued

resellers covered by the orders in that proceeding (which excludes ATTIS) are currently treated by forbearance, and we have received no meritorious compliants against their practices or rates. Streamlined regulation would give the Commission greater control over ATTIS' offerings of basic, resold services; its services would be offered through tariffs on file with the Commission, and we could suspend, investigate, and reject new tariff filings before they become effective. On the other hand, streamlined regulation of ATTIS poses problems. ATTIS' tariff filings probably would be an unnecessary and costly burden on it and on the Commission. The stimulus to competition we expect from our decision today would be less under streamlined regulation than under forbearance.[70] Because of the costs of filing tariffs and delay in the notice period, subjecting ATTIS to streamlined regulation would place it at a competitive disadvantage in offering new services and rates[71] compared to carriers subject to forbearance—all other resellers and all specialized common carriers—without corresponding benefits to consumers.

30. We conclude that the public interest requires that we apply forbearance to ATTIS' basic, resold services. Our compliant process and market forces should be sufficient to ensure that ATTIS' rates for basic services are just, reasonable, and nondiscriminatory. The benefits of increased competition and decreased regulatory burdens should outweigh any greater risks of unlawful practices by ATTIS under forbearance as compared to full or streamlined regulation. If our complaint process reveals unlawful practices by ATTIS, we may revise our decision to apply forebearance.

IV. Scope of Our Decision

31. This section addresses various issues raised by the *Notice* and in comments regarding ATTIS' basic, resold services. First, contrary to the suggestions of some commenters, we do not preempt state regulation of intrastate services provided by any carrier, including by ATTIS.[72] Some states have recently allowed entry of OCCs for intrastate services, and others are considering the scope and terms for such entry. We have no record now on which to base a finding that the public interest would be served by this Commission at this time preempting state regulation and authorizing unlimited competitive entry, resale, sharing, and interconnection for intrastate basic services. On the other hand, we do not now believe that this Commission's concerns about competition in CPE require us to perform a state-by-state analysis of competition in intrastate basic services before authorizing—insofar as the restrictions in the *Second Computer Inquiry* are applicable—ATTIS to resell basic intrastate services in a state. At this time, we conclude that the *Second Computer Inquiry* should not bar ATTIS from offering basic, resold, intrastate services in any state where the state regulatory commission so authorizes it. In providing its intrastate services, ATTIS must comply with the applicable state regulations.

32. Similarly, we do not hereby authorize ATTIS to provide basic, resold, international services.[73] We have not yet addressed the issue of resale by any carrier of international private lines,[74] or forbearance for resellers of any international service.[75] Most of the benefits from authorizing ATTIS to provide basic, resold services will be realized if the scope of that authority is limited to domestic services for the near future. We delay such authorization for international services until we decide certain fundamental matters regarding international resale and/or there is an increase in international resale by carriers not affiliated with ATCOM.

33. Two Bill Operating Companies proposed that we use this proceeding to authorize basic, resold services provided by their separate subsidiaries established pursuant to this Commission's order.[76] The forms and activities of the BOCs' separate subsidiaries have not yet been settled, and special access tariffs have not yet become effective. Possible authorization for these subsidiaries to provide basic, resold services was not raised in the *Notice*, and it would be premature to address this issue here. We express no opinion on the merits of this issue here.

V. Conclusion and Ordering Clause

34. We remain committed to the principles underlying the *Second Computer Inquiry*. We oppose opportunities for shifting costs from competitive to regulated monopoly services which thereby make the rates for the monopoly services unreasonable. Also, we oppose opportunities to use discriminatory access to regulated monopoly services or bundling of monopoly services with competitive products to exclude competition. By our decision today, we remove a regulatory burden with the expectation that consumers will benefit from an increased flow of innovative, efficient, competitive offerings to meet certain, specialized types of demands. Regulatory and market checks should continue to protect consumers against the harms of unreasonable rates for basic services and exclusionary conduct. Our decision is designed to promote competition, and we have the regulatory policies and procedures necessary to ensure that AT&T's new flexibility is not abused to reduce competition. We believe that ATTIS will face strong competition in providing basic, resold services and packages of products and services just as it does in providing enhanced services and, with our price-predictability program, CPE.

35. Accordingly, it is ordered, pursuant to sections 4 (i) and (j), 201–05, and 214 of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j), 201–205, 214, That the policies set forth herein are adopted, effective August 16, 1984.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-18786 Filed 7-16-84; 8:45 am]

BILLING CODE 6712-01-M

17–18. Pursuant to the *Second Computer Inquiry*, ATTIS is required to maintain books of account for its basic services separate from the books for its CPE and enhanced services, as are all common carriers offering CPE or enhanced services. 77 FCC 2d at 476. However, the check of market forces on ATTIS' prices for each of its offerings should make rare the need for detailed examination of ATTIS' cost allocation by the Commission. As explained in connection with the proposals for streamlined regulation, full regulation can also impede competition to the detriment of consumers.

[70] *See Competitive Carrier Rulemaking, supra*, 91 FCC 2d at 65, 48 FR at 52453 n.1, FCC 84-82 (released March 22, 1984) (Fourth Further Notice); Comments in CC Docket No. 83-1375 of IBM at 13.

[71] *See* note 19 *supra*.

[72] *See, e.g.*, comments in CC Docket No. 83-1375 of IBM at 20, ATTIS (Reply) at 32-33, U.S. West at 5, Pacific Bell and Nevada Bell (Reply) at 1-2, Bell Atlantic at 8.

[73] *See, e.g.*, comments in CC Docket No. 83-1375 of NTIA at 11, ATTIS (Reply) at 31-32, IBM at 18-20, ICA at 11-14, ADAPSO at 33.

[74] Resale and Shared Use of Common Carrier International Communications Services, 77 FCC 2d 831 (1980). *See also* AT&T: Revisions of Private Line Service Tariff FCC No. 260 and Tariff No. 3, Transmittal No. 92 (released June 14, 1984).

[75] *Competitive Carrier Rulemaking, supra*, 48 FR 52453 n.5.

[76] Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies, 49 FR 1190 (January 10, 1984), *appeal pending sub nom.* Illinois Bell Tel. Co. v. FCC, Nos. 84-1145, 84-1332, 84-1475 (7th Cir., filed January 30, 1984). *See* Comments in CC Docket No. 83-1375 of Southwestern Bell at 4-5, BellSouth at 2.

47 CFR Part 73

[BC Docket No. 79-269; RM-3392; RM-3398]

TV Broadcast Stations in Asbury Park, New Jersey, et al.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action allots Channel 62 to Atlantic City as that community's second commercial television service; Channel 59 to Vineland as its second commercial television service and Channel *66 to West Milford as that community's first noncommercial television service. In order to make these allotments, related substitutions and a license modification of WGGF-TV, channel 59 in Lebanon, Pennsylvania were also granted. The reason for this action is to increase the availability of television broadcast service to the State of New Jersey.

DATE: Effective August 15, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR 73

Television broadcasting.

Third Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations. (Dover and Seaford, Delaware; *Asbury Park, Atlantic City, New Brunswick,* Newton, *Vineland, West Milford* and Wildwood, *New Jersey;* Kingston and Syracuse, New York; and *Bethlehem, Lebanon* and *State College, Pennsylvania);* (BC Docket No. 79-269, RM-3392, RM-3398).

Adopted: June 27, 1984.
Released: July 9, 1984.
By the Commission.

1. The *Notice of Proposed Rule Making* in this proceeding, 45 FR 16219, published March 13, 1980, proposed to allot six additional UHF TV channels throughout the State of New Jersey. The proposed new allotments were:

Asbury Park, channel 60;
Atlantic City, Channel 62;
Newton, Channel 63; [1]
Vineland, Channel 59;
West Milford, Channel *66 and
Wildwood, Channel 34.[2]

Several related channel substitutions were proposed at various communities in Delaware, Pennsylvania and New York in order to accommodate these six New Jersey allocations.

2. Comments were filed by: Renaissance Broadcasting Corporation ("Renaissance"), permittee of television station WRBV, Channel 65, Vineland, New Jersey; [3] Community Television ("Community"); Greater Washington Educational Telecommunications Association, Inc. ("GWETA"), licensee of Station WETA-TV, Channel 26, Washington, D.C.; John Callinan *et. al.* ("Callinan") North Jersey Television Corporation ("NJTC"); New Jersey Public Broadcasting Authority ("NJPBA") Association for Public Broadcasting ("APB"); New Jersey Coalition for Fair Broadcasting ("NJCFB"); American Broadcasting Companies, Inc. ("ABC"); Association of Maximum Service Telecasters, Inc. ("AMST"); Mr. Finn M.W. Caspersen ("Caspersen"); NEP Communications, licensee of Station WNEP-TV, Scranton, Pa.; WWHT Corporation ("WWHT"), licensee of Station WWHT(TV) Channel 68, Newark, New Jersey; [4] WBRE-TV, Inc., licensee of Station WBRE-TV (Channel 28), Wilkes-Barre, Pa.; Senator William V. Roth, Jr. of Delaware; and Kenneth C. Madden, State Superintendent, Delaware Department of Public Instruction. In addition, the Delaware Citizens Committee and the Citizen's Committee for the Expansion of Commercial Television to the State of Delaware (DCC and CCETD) filed a Joint Petition for Alternate Amendment of § 73.606(b), TV Table of Assignments, for Atlantic City, New Jersey and Milford, Delaware. Reply comments were filed by NJTC, Caspersen and Callinan.

Background

3. Until recently, New Jersey residents have depended upon local UHF stations licensed to various communities throughout the state and commercial VHF stations licensed to New York and Philadelphia for news, public affairs and informational programming. In response to a "Petition for Inquiry into the Need for Adequate TV for the State of New Jersey" filed by the New Jersey Coalition for Fair Broadcasting ("NJCFB") the Commission first inquired into proposals to provide better service to New Jersey in Docket No. 20350. In the *First Report and Order* and *Further Notice of Proposed Rule Making,* 58 F.C.C. 2d 790 (1976), the Commission found that section 307(b) of the Communications Act requiring an equitable distribution of frequencies had not been violated by the absence of a commercial VHF channel assignment in New Jersey, but that New Jersey did need more local television coverage. In the *Second Report and Order,* 59 F.C.C. 2d 1386 (1976), the Commission again found that there was a need for increased television service in New Jersey and in furtherance of that goal ordered all New York and Philadelphia stations to establish a "physical presence" and to meet special programming obligations as a means of providing local service to New Jersey residents.

4. The *Third Report and Order,* 62 F.C.C. 2d 604 (1976) concluded the rule making proceeding. The Commission therein discussed the commitments it had received from New York and Philadelphia TV stations and announced that it would review these statements in connection with future renewal applications. A proposal for these stations to maintain a studio in New Jersey was rejected.

5. In *New Jersey Coalition for Fair Broadcasting* v. *F.C.C.,* 574 F.C.C. 2d 1119 (3rd Cir. 1978), the Court of Appeals upheld the Commission's determination that section 307(b) of the Communications Act requires equitable distribution of service rather than equal distribution of allocations and that the remedy proposed in the *Third Report and Order, supra.,* was a reasonable plan for improving New Jersey television service. However, as part of the Commission's continuing effort to further the availability of television service to the residents of the State of New Jersey, we adopted the *Notice of Proposed Rule Making* under consideration here, proposing to make six new UHF TV channel assignments to various communities in the State. In a companion *Notice of Proposed Rule Making,* 45 FR 16222, published March 13, 1980, (BC Docket No. 79-270), the Commission sought comments on methods "by which the most favorable

[1] In the *Second Report and Order,* adopted May 8, 1984, 49 FR 21931, published May 24, 1984, the Commission allotted Channel 63 to Newton, New Jersey, and substituted Channel 62 for 63 at Kingston, New York, and Channel 68 for Channel 62 at Syracuse, New York.

[2] In the *First Report and Order,* 47 FR 47693, published October 28, 1982, in this proceeding, the Commission dismissed the proposal to allot UHF Channel 34 to Wildwood, New Jersey, with attendant amendments to the Table of Assignments for Dover and Seaford, Delaware. Consequently, to the extent that the comments address those matters, they are no longer relevant and will not be discussed herein.

[3] On November 4, 1982, Renaissance's construction permit was assigned to Richard M. Milstead, Receiver, as a result of an involuntary bankruptcy action. The receiver is now the licensee for Channel 65.

[4] Supplemental comments were also filed by WWHT for the purpose of updating the current situation in New Jersey.

conditions for the effective use of existing and proposed New Jersey television assignments might be created." Finally the Commission culminated its efforts by reassigning Channel 9 from New York to Secaucus, N.J. and requiring Station WOR-TV, the licensee, to provide service throughout its northern New Jersey Grade B coverage area.

General Comments

6. NJCFB opposes the proposed allotments. It argues that additional UHF channels are unsuitable for New Jersey needs since the problem is not the lack of UHF but of VHF television. NJCFB contends that the proposed stations are to be located at small communities which offer a limited market and no incentive for potential advertisers. Consequently, NJCFB asserts that there is little likelihood of these stations becoming viable.

7. ABC generally supports the *Notice of Proposed Rule Making*, but asserts that the allotments are not designed to serve major population centers and can only provide a marginal expansion of television service in New Jersey. WWHT supports the ultimate goals of the *Notice of Proposed Rule Making*, but disagrees on the means to accomplish these goals.[5] Generally, WWHT argues that the Commission's plan fails to take into account its effect on existing licensees and channel allotments in the State. WWHT further argues that the plan inadequately addresses the economic feasibility of the proposed stations.

Asbury Park

8. Asbury Park (population 17,015)[6] is located in Monmouth County in east central New Jersey, approximately 60 kilometers (37 miles) south of New York City. It has no local television service.[7]

9. Community states that it intends to apply for authorization to construct a full power or satellite television station at Asbury Park, New Jersey. However, Community asserts that its intentions are contingent on the FCC creating a so called "favorable environment" based on the proposals contained in Docket No. 79-270. Community contends that the Commission should encourage joint operation of the stations and expedite New Jersey applications to the maximum extent possible. WWHT argues that the assignment of Channel 60 to Asbury Park would cause interference to WWHT's Channel 60 translator station located atop the World Trade Center and, as a result, require termination of the translator operation. Alternatively, WWHT proposes the allotment of Channel 27 to Toms River which it contends could provide Grade A service to a significant portion of New Jersey that presently receives no such service. Additionally, WWHT indicates that a transmitter site for Channel 27 at the Barnegat Light reference coordinates meets all spacing requirements and that short-spaced sites further inland could provide equivalent protection.[8] The Toms River proposal elicited no interest from commenting parties, therefore we have not given it further consideration.

10. In the *Notice*, we originally proposed the allotment of Channel 60 to Asbury Park, and the substitution of Channel 26 for Channel 60 at Bethlehem, Pennsylvania. Channel 60 was proposed because it was the only channel available for allotment within the central portion of New Jersey. However, we noted that an application was already on file for Channel 60 at Bethlehem. We further noted that under our proposal the application would need to be amended to specify Channel 26. A problem arose there because the Bethlehem Channel 60 application specified a site which would not meet the spacing requirements for Channel 26. The allotment of Channel 26 would require use of a site approximately 13 miles north of Bethlehem. In addition, NEP, AMST, GWETA[9] and WBRE-TV filed oppositions noting, *inter alia*, possible problems with reception of the proposed station to Bethlehem due to terrain obstructions. The oppositions further note that although the proposal for Channel 26 mentions the possibility of a suitable transmitter site at Smith Gap, Pennsylvania, no commenting party demonstrated the availability of such a site at a location which would comply with the Commission's Rules.

11. On the basis of the record before us, we shall decline to allot Channel 60 to Asbury Park. Initially, we note that the only expression of interest in the channel was contingent upon the outcome in the companion proceeding, Docket 79-270. However, the *Report and Order* in Docket 79-270 did not adopt the changes proposed by Community. Moreover, it does not appear that there is a suitable site from which the Bethlehem applicant could operate on Channel 26. Accordingly, we will not allot Channel 60 to Asbury Park.[10]

Atlantic City

12. Atlantic City (population 40,199) is located in Atlantic County in southwest New Jersey, approximately 95 kilometers (60 miles) east southeast of Philadelphia. Channels *18, *36 and 53 are currently assigned to Atlantic City. Channel 18 is unavailable for television broadcast use because of the action taken in Dkt. No. 18261.[11] Channel *36 is reserved for noncommercial educational use and is unoccupied and unapplied for. Channel 53 is currently licensed to Atlantic City Television Corporation (Station WWAC-TV).[12] The *Notice*

[5] WWHT operates a translator station on Channel 60 from the World Trade Center, New York City, and an STV station on Channel 68, Newark, New Jersey.

[6] Population data are taken from the 1980 U.S. Census, Advance Report.

[7] Channel 58 is currently allotted to Asbury Park but it is not available for commercial use there until it is determined by the Commission that Channel 58 is not needed for educational use at New Brunswick, New Jersey. Channel 58 has been reserved as a replacement for Channel *19 at New Brunswick following the action taken in Docket No. 18261. In 1970, the Commission designated UHF Channels 14-20 for land mobile communications use. See, *First Report and Order*, Docket 18261, 23 F.C.C. 2d 325, 343-344, 359 (1970).

[8] WWHT also filed comments concerning the improvement of television service in New Jersey. However these comments will be considered in the companion proceeding *Providing Optimum Conditions for Utilization of New Jersey Television Assignment* in Docket No. 79-270.

[9] GWETA specifically opposed the proposed allotment of Channel 26 to Bethlehem, Pennsylvania, because available transmitter sites would have to be located at least seven miles short spaced to the WETA-TV antenna site (Channel 26, Washington, D.C.) GWETA alleges that without specific limitation and condition, the proposed allotment is in violation of the Commission's mileage separation rules. Section 73.698. GWETA filed "Supplemental Comments" in order to seek clarification and/or reconciliation, between our proposal to substitute Channel 26 for Channel 60 in Bethlehem, Pennsylvania, and our action in Greenwood, South Carolina where we dismissed an application for a new noncommercial station for being in violation of the Commission's short spacing rules, §§ 73.610(d) and 73.698, *South Carolina Educational Television Commission*, 80 F.C.C. 2d 390 (1980). Inasmuch as we are not adopting the proposed Channel 60 Bethlehem assignment, GWETA's concerns are moot. Therefore, the supplemental petition will be dismissed.

[10] As indicated in the *Notice*, Channel *19 had been allotted to New Brunswick, New Jersey, and reserved for noncommercial educational use. However, UHF Channels 19 and 20 were made available for land mobile communications in Philadelphia, Pennsylvania, as a result of the decision in Docket 18261. Channel *19 thereby became unavailable at New Brunswick and Channel *58 was allotted as a replacement. However, because there was no replacement for Channel 58 at Asbury Park, that channel remained, subject to noncommercial educational use at New Brunswick. The New Jersey Public Broadcasting Authority is currently licensed to operate Station WNJB on Channel *58 in New Brunswick. Accordingly, we will editorially amend the Television Table of Assignments to delete Channel *19 at New Brunswick and Channel 58 at Asbury Park.

[11] We also take this opportunity to delete Channel *18 from Atlantic City, as it is not available there. See footnote 10, *supra*.

[12] WWAC, Channel 53, Atlantic City, New Jersey has been off the air for approximately one year pending the sale of the station.

proposed to assign Channel 62 to Atlantic City.

13. Callinan states that it supports the proposed allotment and intends to apply for authorization to operate on Channel 62 in Atlantic City. No oppositions have been filed against the allotment.

14. In view of the supporting comments filed by Callinan, expressing his intention to apply for the channel, we believe that the assignment of Channel 62 to Atlantic City would serve the public interest by providing the second local commercial television service. The Channel 62 allotment to Atlantic City will necessitate the imposition of a 6.8 mile southwest site restriction on Channel 55 at Lebanon, Pennsylvania. Channel 55 has been substituted for Channel 59 at Lebanon in para. 20, *infra.* in order to permit the allotment of Channel 59 to Vineland. Recently, WGGF, Greater Harrisburg Channel 59, Inc. was granted a permit at Lebanon conditioned on the outcome of this proceeding.

Vineland

15. Vineland (population 53,753) is located in Cumberland County, in south central New Jersey, approximately 60 kilometers (37 miles) southeast of Philadelphia. Vineland has one TV channel assignment (Channel 65) authorized to Renaissance for Station WRBV.

16. Renaissance opposes the proposed allotment plan. Generally, Renaissance contends that the addition of the six new UHF channels could result in short spacing and interference with existing stations, adverse economic impact on existing licensees and resultant harm to the public. Alternatively, Renaissance proposes that the Commission reallot Channel *35 from Philadelphia to Vineland, and delete the noncommercial reservation; reallocate Channel 65 from Vineland to Glassboro with a noncommercial reservation, and substitute *62 for *36 in Atlantic City. Renaissance then suggests that its permit (for Channel 65) could be modified to Channel 35 at Vineland, which it contends would bring significant benefits to the station by providing a more central position on the dial, greater efficiency in transmission and a stronger signal.

17. Caspersen and Callinan oppose Renaissance's proposal. Caspersen contends that the Commission does not automatically bar new broadcast service on the ground that increased competition might have an impact on an existing station, citing *WLVA, Inc.* v. *F.C.C.*, 459 F.2d 1286 (D.C. Cir. 1972). Caspersen further contends that the Commission's policy of fostering the development of UHF broadcasting[13] is primarily intended to protect UHF stations against the competitive impact of VHF stations, rather than new UHF allotments, citing *Video Empresas Del Deste, Inc.*, 37 F.C.C. 2d 136 (1972). Callinan argues that Renaissance has not made a sufficient showing to justify the withdrawal of Channel 35 from Philadelphia.

18. Community expressed an interest in constructing a full power or satellite television station on the Channel 59 in Vineland.

19. The *Notice* proposed the allotment of Channel 59 to Vineland, New Jersey with a site restriction 2.3 miles south. Renaissance proposed an alternative allocation scheme for Vineland which, *inter alia*, would reallot Channel 35 from Philadelphia to Vineland and allow Renaissance's present construction permit for Channel 65 to be modified to specify Channel 35. Otherwise, Renaissance, generally opposes the *Notice* on competitive grounds citing *Carroll Broadcasting Company* v. *F.C.C.*, 258 F. 2d 440 (D.C. Cir. 1958) and *WLVA, Inc., supra.* We have not accepted Renaissance's proposal to reassign Channel 35 to Vineland because we do not generally remove a noncommercial education reservation so that a commercial station can use a lower UHF channel. See *Houston, Texas*, 47 FR 6875, published February 17, 1982. As correctly noted by Caspersen in its "Reply," Renaissance, in essence, attempts to raise a *Carroll* issue regarding the instant proceeding. However, such arguments are more properly raised at the application stage. Thus, in view of the expressed interest in using Channel 59 at Vineland, the Commission finds that it is in the public interest to provide a second local TV service there.

20. In order to assign Channel 59 to Vineland, Channel 55 must be substituted for Channel 59 at Lebanon, Pennsylvania, and the permit of Greater Harrisburg for Station WGGF modified. See para. 25, *infra.* In addition, Channel 59 must be substituted for unused Channel 55 at State College, Pennsylvania in order to accommodate the Lebanon substitution.

West Milford

21. West Milford (population 22,750) is located in north central New Jersey, in Passaic County, approximately 55 kilometers (35 miles) northwest of New York City. There are no television channels currently allotted. NJTC and NJPBA support the proposed allotment of Channel 66 to West Milford.[14] NJTC supports the allotment of Channel 66 to West Milford as a commercial channel. NJTC also contends that the only realistic way to encourage the development of UHF television service in the northern New Jersey area is by the allotment of three commercial stations. NJTC feels that without a full complement of network programs, it would be difficult for a separate northern New Jersey market to develop. Although the *Notice* proposed to assign Channel *66 for noncommercial educational use, NJTC argues that a commercial allotment would not affect noncommercial service in New Jersey, since television stations WNET (Channel 13), Newark, New Jersey and WNJM (Channel 50), Montclair, New Jersey, presently supply adequate coverage.

22. Interest in the allotment of Channel 66 for West Milford has been demonstrated by both NJTC and NJPBA. NJTC requests a commercial allotment, while NJPBA requests that Channel 66 be reserved for noncommercial educational use. NJPBA contends that Station WNJM(TV) in Montclair does not provide an adequate signal in northwestern New Jersey. NJPBA further contends that the programming of educational television Station WNET, Channel 13, does not adequately address New Jersey interests. NJPBA points out that WNET's major facilities, equipment and staff are located in New York, and while WNET does produce a nightly New Jersey news program in conjunction with NJPBA, and a half hour weekly public affairs program, there are no other regularly scheduled programs primarily of interest to New Jersey residents. To support its arguments NJPBA also submitted a map showing its service areas and cited viewer complaints of inadequate service in this area. It also supplied a survey of schools in northwestern New Jersey which could participate in the operation of the station.

23. After consideration of the above comments we are persuaded that the public interest would be served by

[13] *WFMY Television Corp.*, 59 F.C.C. 2d 1010 (1976). See also, *VHF TV Top 100 Markets*, 81 F.C.C. 2d 233 (1980), *reconsideration denied*, 90 F.C.C. 2d 160 (1982), *aff'd sub nom. Springfield Television of Utah, Inc.* v. *FCC*, 710 F. 2d 620 (10th Cir. 1983); *Central Alabama Broadcasters, Inc.* 88 F.C.C. 2d 1501 (Rev. Bd. 1983), *review denied*, FCC 83-210, released May 2, 1983, *aff'd sub nom. WCOV, Inc.* v. *FCC*, No. 83-1557 (D.C. Cir. March 1, 1984).

[14] Originally, NJTC sought to change the allotment of Channel 60 to Netcong, New Jersey. This proposal would require the substitution of Channel 26 for Channel 60 at Bethlehem. However, for the reasons stated in para. 11, *supra.* concerning the proposed allotment of Channel 60 to Asbury Park, we cannot switch Channel 60 from Bethlehem to Netcong.

reserving Channel *66 for noncommercial educational use. New Jersey now has one VHF commercial station (WOR–TV, Channel 9, Secaucus, New Jersey) serving the northern portion of the state. NJPBA has adequately demonstrated that due to terrain and antenna orientation problems northwestern New Jersey receives inadequate service from other noncommercial educational stations. Consequently, we agree with NJPBA that there is a greater need for noncommercial educational service in northern New Jersey than for commercial service.

24. A separate proceeding (RM–4523) involves a request that the Commission requires Station WOR–TV to operate TV translators in southern New Jersey in order to provide a statewide TV service oriented to the needs of the residents of New Jersey. Another option is now available to Station WOR–TV to apply for and operate Channel 59, Vineland or Channel 62, Atlantic City as a satellite station to extend its signal throughout southern New Jersey.

25. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934 as amended, and §§ 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective August 15, 1984, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with regard to the following communities:

City	Channel No.
Asbury Park, NJ	
Atlantic City, NJ	*36, 53+, 62–.
New Brunswick, NJ	47+, *58.
Vineland, NJ	59–, 65–.
West Milford, NJ	*66–.
Lebanon, PA	55–.
State College, PA	29+, and *59+.

26. It is further ordered, pursuant to the authority contained in section 316 of the Communications Act of 1934, as amended, that the license of UHF television station, WGGF, Channel 59, Lebanon, Pennsylvania, is modified to specify operation on Channel 55, subject to the following provisions:

(a) The licensee shall file with the Commission a minor change application for a construction permit (Form 301), specifying the new facilities.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorized a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

27. It is further ordered, That the Secretary shall send a copy of this *Order* by certified mail, return receipt requested to: Greater Harrisburg Channel 59, Inc., One Commerce Place, #825, Nashville, Tennessee 37239.

28. It is further ordered, That the motion to sever and grant the allocation of Channel 62 to Atlantic City, New Jersey, filed by John Callinan is dismissed.

29. It is further ordered, That this proceeding is terminated.

30. For further information concerning the above, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84–18785 Filed 7–16–84; 8:45 am]

BILLING CODE 6712–01–M

SMALL BUSINESS ADMINISTRATION

48 CFR Ch. 22

Procurement Assistance

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration issues final rules governing the debarment and suspension of business concerns and individuals from participating in direct SBA procurement or acquisitions contracts. These rules have no application to SBA's financing or guarantee assistance programs. These rules do not apply to SBA's section 8(a) program, nor do they apply to SBA's set-aside programs in conjunction with other agencies or other SBA assistance programs. The purpose of these rules is to ensure that SBA, in its own direct contracting, deals only with responsible business concerns and individuals. These rules supplement 48 CFR Subpart 9.4 of the Federal Acquisition Regulations and implement Federal Procurement Regulations (FPR) Temporary Regulations 65 (47 FR 43692, October 4, 1982) which established a system for making agency procurement debarments and suspensions effective throughout the Executive branch of the Government. Chapter 22 of Title 48 of the Code of Federal Regulations (CFR) is established to take into account these rules.

DATES: These regulations are effective August 16, 1984.

ADDRESS: Written comments should be addressed to Mr. Donald Young, Associate Administrator for Procurement and Technical Assistance, U.S. Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Young at (202) 653–6635.

SUPPLEMENTARY INFORMATION: SBA published proposed regulations concerning debarment and suspension on January 19, 1984, 49 FR 2257. These rules set forth proposed procedures governing the debarment and suspension of business concerns and individuals from participating indirect SBA procurement or acquisitions contracts. When published as proposed rules, these regulations proposed to amend 13 CFR Part 125 by adding a new § 125.11. Since that publication the Federal Acquisition Regulations (FAR), codified in Title 48 of the CFR, became effective. Therefore, these final rules, which implement Subpart 9.4 of the FAR, amend 48 CFR by establishing Subpart 2209.4 of Chapter 22. SBA received no comments from anyone outside the Agency regarding these proposed rules. Consequently, aside from the renumbering, SBA is adopting the proposed rules as final rules with some minor technical changes and clarifications.

The scope of these regulations is to prescribe the policies, procedures, and causes governing the debarment and suspension of contractors by SBA. These regulations provide for the listing of debarred and suspended contractors, and of contractors declared ineligible, and set forth the consequences of such listing. These regulations do not apply to recipients of SBA financial or guarantee assistance; they also do not apply to SBA's "section 8(a) program," "set-aside" programs, or other SBA assistance programs. The purpose of 2209.401 is to clarify that these rules apply only to suspension and debarment actions of procurement contractors dealing directly with SBA.

The general policies SBA will follow in making debarment and suspension decisions are set forth in 2209.402. These policies are essentially the same as those prescribed in FPR Temporary Regulation 65. This subsection states that SBA shall solicit offers from, award contracts to, and consent to subcontracts only with responsible business concerns and individuals.

Various terms used in these regulations are defined in 2209.403. The definitions of "adequate evidence," "affiliates," "agency," "consolidated list of debarred, suspended, and ineligible contractors," "contractor," "conviction," "debarment," "debarring official," "indictment," "ineligible," "legal proceedings," "preponderance of the

evidence," "suspending official," and "suspension," are derived essentially verbatim from FPR Temporary Regulation 65.

Section 2209.405 states the consequences of listing a contractor as debarred, suspended or declared ineligible. A contractor that is debarred or suspended will be excluded from receiving further contracts, under 2209.405(a), unless SBA determines that there is a compelling reason to allow a contract with such contractor. In addition, this subsection provides that SBA cannot solicit offers from, award contracts to, or consent to subcontracts with these contractors. Again, these actions can be taken if SBA determines there to be a compelling reason for such action..

Pursuant to 2209.405(c), contractors listed as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts and subcontracts under the conditions and for the period prescribed in the statute or regulations. SBA cannot solicit offers from, award contracts to, or consent to subcontracts with these contractors. However, unlike debarred or suspended contractors in 2209.405(a), these actions cannot be taken with declared ineligible contractors even if SBA determines there to be a compelling reason for such action.

SBA may continue, pursuant to 2209.405–1(a), contracts or subcontracts in existence at the time the contractor was debarred or suspended unless SBA's Administrator directs otherwise. Subsection 2209.405–1(b) states that SBA cannot renew or extend the duration of current contracts or subcontracts of debarred or suspended contractors unless SBA's Administrator gives compelling reasons for renewal or extension. In addition, pursuant to 2209.405–2, a debarred or suspended contractor will not get SBA's consent to be a subcontractor for any subcontract subject to SBA's consent, unless the SBA Administrator or the Associate Administrator for Procurement and Technical Assistance gives compelling reasons for the approval.

Subsection 2209.406–1(a) states that although one of the specified causes for debarment exists, the regulations do not *require* that the contractor be debarred. this subsection provides that the seriousness of the contractor's acts and any mitigating factors will be taken into account in making any debarment decision. Pursuant to 2209.406–1(b), the debarment applies to all divisions or other organizational elements of the debarred contractor, unless the debarment is expressly limited to specific divisions, organizational elements, or commodities. This subsection further states that the debarring official can extend the debarment to include affiliates of the debarred contractor in appropriate situations. Subsection 2209.406–1(c) makes the debarment effective throughout the Executive Branch of the Government, unless an acquiring agency's head states compelling reasons justifying continued business dealings between that agency and the contractor.

Section 2209.406–2 specifies three causes for which a contractor may be debarred. These causes are identical to those prescribed in FRP Temporary Regulation 65. They are (1) the conviction of, or civil judgment against, the contractor for one of the several stated offenses, (2) the serious violation of the terms of a government contract or subcontract, or (3) any other compelling or serious cause that affects the present responsibility of a government contractor or subcontractor.

Section 2209.406–3 sets forth the procedures of the debarment process. These procedures are essentially the same as those provided for in FPR Temporary Regulation 65. SBA's Associate Administrator for Procurement and Technical Assistance will be the debarring and suspending official at SBA. Such official will, pursuant to 2209.406–3(a), seek the assistance of SBA's Office of Inspector General for any appropriate or necessary investigation.

Pursuant to 2209.406–3(b), SBA's established procedures governing the debarment decisionmaking process are to be as informal as practicable, in accord with principles of fundamental fairness and due process of law. These procedures allow the contractor to submit information in opposition to the proposed debarment, and to appear before SBA's Office of Hearings and Appeals where the debarring official determines that a dispute concerning material facts exists.

Pursuant to 2209.406–3(c), debarment will be initiated by giving the contractor notice of the proposal to debar. SBA must advise the contractor of seven items in such notice, including that within 30 days after receipt of such notice, the contractor may submit information and argument in opposition to the proposed debarment.

The decisionmaking procedures the debarring official will follow in making a final decision whether or not to impose debarment are set forth in 2209.406–3(d). In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, 2209.406–3(d)(1) requires the debarring official to render a decision based on all the information in the administrative record, including any submission made by the contractor. If no suspension is in effect, the decision must be made within 30 working days after receipt of any information and argument submitted by the contractor, unless the period is extended for good cause. Where additional proceedings are necessary to determine the answer to disputed material facts, such facts will be found before SBA's Ofice of Hearings and Appeals. The decision of the debarring official is then to be based on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record. The regulations require the debarring official to refer matters involving disputed material facts to SBA's Office of Hearings and Appeals for findings of fact and a recommended decision.

In any action where the proposed debarment is not based upon a conviction or civil judgment, 2209.406–3(d)(3) provides that the cause for debarment be established by a preponderance of the evidence.

If the debarring official decides to impose debarment, prompt notice of this decision must be given to the contractor and any affiliates involved under 2209.406–3(e)(1). This paragraph specifies what must be included in the notice given to the contractor. The contractor and any affiliates involved must also be promptly notified if debarment is not imposed.

Section 2209.406–4 sets forth the requirements governing the period of debarments. These requirements are essentially the same as those set forth in FPR Temporary Regulation 65. The period for a debarment will be commensurate with the seriousness of the cause(s); however, it will generally not be longer than three years.

Section 2209.406–5 prescribes the provisions governing the scope of debarment. These provisions are essentially identical with those set forth in FPR Temporary Regulation 65. Included is the provision which states that the conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor if the conduct occurred in connection with the duties done for the contractor, or with the contractor's knowledge, approval, or acquiescence. The purpose of this provision is to ensure that a contractor cannot hide behind the actions of others.

Subsection 2209.407–1(b) states that suspension is a serious action to be imposed on the basis of adequate

evidence, pending the completion of investigation or legal proceedings, when immediate action is necessary to protect the government's interest. In determining the adequacy of the evidence, SBA will consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. An examination of any basic documents or physical evidence will be included in an assessment of adequate evidence. The circumstances surrounding each alleged "serious action" will be an important factor in determining if "adequate evidence" exists.

Consistent with debarment, 2209.407-1(c) states that a suspension applies to all divisions or other organizational elements of the contractor, unless it is expressly limited to specific divisions, organizational elements, or commodities. The suspension may also be applied to affiliates in appropriate instances. Subsection 2209.407-1(d) makes the suspension effective throughout the Executive Branch of the Government in the same manner as with debarments.

Section 2209.407-2 specifies the causes for suspension. These are the identical causes, with one additional cause, as those set forth in FPR Temporary Regulation 65. There must be adequate evidence of one of the causes in order for there to be a suspension. The offenses that are stated to be a cause for debarment in 2209.406-2(a) are also stated in 2209.407-2(a) to be a cause for suspension. In addition, an indictment for any one of these offenses constitutes adequate evidence for suspension pursuant to 2209.407-2(b). Adequate evidence of any other serious or compelling matter that affects the responsibility of a contractor is also a cause for suspension under 2209.407-2(d). In addition, these rules add another cause for suspension in 2209.407-2(c). Pursuant to the terms of that subsection, a serious violation of the terms of a Government contract or subcontract is sufficient justification for a suspension, just as this is a valid cause for debarment under 2209.407-2(b).

Section 2209.407-3 sets forth the procedures of the suspension process. These procedures are essentially the same as those provided for in FPR Temporary Regulation 65. The same referral and investigation procedures which apply for debarments under 2209.406-3(a) also apply to suspensions under 2209.407-3(a). Subsection 2209.407-3(b) calls for an informal decision-making process which affords the contractor an opportunity to submit information and argument in opposition to the suspension. Where SBA's suspending official determines that a dispute regarding material facts exists, the contractor may, upon request, appear before SBA's Office of Hearings and Appeals.

A contractor and any named affiliates must immediately be given notice of any suspension pursuant to 2209.407-3(c). This subsection prescribes what is to be included in such notice. For example, the contractor must be advised that within 30 days after receipt of the notice he may submit information and argument in opposition to the suspension; and that additional proceedings to determine disputed facts material to the suspension will be conducted unless the action is based on an indictment or a determination is made, on the basis of Department of Justice advice, that substantial interests of government in pending or contemplated legal proceedings based no the same facts as the suspension would be prejudiced.

In actions based on an indictment in which no dispute over material facts is raised, or in which additional proceedings to determine disputed material facts have been denied based on Department of Justice advice, the suspending official's decision must be based, pursuant to 2209.407-3(d)(1), on all the information in the administrative record, including submissions made by the contractor. In actions in which additional proceedings are necessary because of disputed facts, the suspending official must base his decision under 2209.407-3(d)(2) on the written findings of fact, any information and argument submitted by the contractor, and any other information in the administrative record. The same rules which apply to debarments under 2209.406-3(d))2)(i) concerning referral of matters involving disputed material facts and rejection of such findings apply to suspensions under 2209.407-3(d)(2)(i). The contractor is to be given prompt notice of the suspending official's decision pursuant to 2209.407-3(d)(4).

Section 2209.407-4 sets forth the requirements governing the period of suspensions. These requirements are essentially the same as those set forth in FPR Temporary Regulation 65. Suspensions are intended to be only temporary in nature, generally lasting no longer than 12 months (but in no case longer than 18 months), and these regulations indicate that point.

Section 2209.407-5 states that the scope of suspension shall be the same as that for debarment, except that the procedures governing suspensions are imposed.

SBA has determined that these rules do not constitute major rules for the purpose of Executive Order 12291. They are procedural in nature and in and of themselves do not impose costs upon the businesses which might be affected by them. In addition, since these rules are procedural in nature, they do not constitute rules which are covered by the Regulatory Flexibility Act, 5 U.S.C. 501, *et seq.*

This final rule contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 48 CFR Ch. 22

Government procurement.

Therefore, pursuant to the authority contained in section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6), Title 48 of the Code of Federal Regulations is amended by establishing Chapter 22 to read as follows:

CHAPTER 22—SMALL BUSINESS ADMINISTRATION

PART 2209—CONTRACTOR QUALIFICATIONS

Subpart 2209.4—Debarment, Suspension, and Ineligibility

Sec.

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2209.401 Applicability.
2209.402 Policy.
2209.403 Definitions.
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2209.407 Suspension.
2209.407-1 General.
2209.407-2 Causes for suspension.
2209.407-3 Procedures.
2209.407-4 Period of suspension.
2209.407-5 Scope of suspension.

Authority: Sec. 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6).

Subpart 2209.4—Debarment, Suspension, and Ineligibility

2209.400 Scope.

(a) These regulations:

(1) Prescribe policies and procedures governing the debarment and suspension of contractors by SBA for the causes given in 2209.406-2 and 2209.407-2;

(2) Provide for the listing of these debarred and suspended contractors, and of contractors declared ineligible (see the definition of "ineligible" in 2209.403; and

(3) Set forth the consequences of this listing.

(b) These regulations do not prescribe policies and procedures governing declaration of ineligibility. However, they do cover the listing of ineligible contractors and the effect of this listing.

2209.401 Applicability.

These regulations apply to contractors doing business directly with SBA. They do not apply to recipients of SBA financial or guarantee assistance, nor do they apply to SBA's small business set aside or section 8(a) programs.

2209.402 Policy.

(a) SBA shall solicit offers from, award contracts to, and consent to subcontracts with responsible business concerns and individuals only. Debarment and suspension by SBA are discretionary actions that, taken in accordance with these regulations, are appropriate means to effectuate this policy.

(b) The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest, for the Government's protection and not for purposes of punishment. SBA shall impose debarment or suspension to protect the Government's interest and only for the causes and in accordance with the procedures set forth in these regulations.

2209.403 Definitions.

(a) "Adequate evidence" means information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) "Affiliates." Business concerns or individuals are affiliates if, directly or indirectly, (1) either one controls or can control the other or (2) a third party controls or can control both.

(c) "Agency," as used in these regulations means, SBA, or any other agency of the Executive Branch consistent with the context in which the term is used.

(d) "Consolidated list of debarred, suspended, and ineligible contractors" means a list compiled, maintained, and distributed by the General Services Administration containing the names of contractors debarred or suspended by agencies under the procedures of OMB Policy Letter 82-1 (June 24, 1982), as well as contractors declared ineligible under other statutory or regulatory authority.

(e) "Contractor," as used in these regulations, means any individual or other legal entity that: (1) Submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a contract by SBA or a subcontract under a contract with SBA, or (2) conducts business with SBA as an agent or representative of another contractor.

(f) "Conviction" means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

(g) "Debarment," as used in these regulations, means action taken by a debarring official under 2209.406 to exclude a contractor from Government contracting for a reasonable, specified period; a contractor so excluded is "debarred."

(h) "Debarring official" means (1) the SBA Administrator or (2) a designee authorized by the SBA Administrator to impose debarment. That designated official is the SBA's Associate Administrator for Procurement and Technical Assistance.

(i) "Indictment" means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(j) "Ineligible," as used in these regulations, means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive Order, or regulatory authority other than these regulations; for example, the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive orders, the Walsh-Healey Public Contracts Act, the Buy American Act, and the Environmental Protection Acts and Executive orders.

(k) "Legal Proceedings" means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

(l) "Preponderance of the evidence" means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(m) "Suspending official" means (1) the SBA Administrator or (2) a designee authorized by the SBA Administrator to impose suspension. That designated official is SBA's Associate Administrator for Procurement and Technical Assistance.

(n) "Suspension," as used in these regulations, means action taken by a suspending official under 2209.407 to disqualify a contractor temporarily from Government contracting; a contractor so disqualified is "suspended."

2209.405 Effect of listing.

(a) Contractors debarred or suspended by SBA, under 2209.406 or 2209.407 of these regulations, or by any other executive agency are excluded from receiving contracts, and SBA shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless SBA determines that there is a compelling reason for such action (see 2009.405-2, 2209.406-1(c) and 2209.407-1(d)).

(b) SBA will establish a list of its debarred or suspended contractors, and the Associate Administrator for Procurement and Technical Assistance will distribute this list to the General Services Administration within five working days after the action becomes effective.

(c) Contractors listed as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts and, if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. SBA shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period.

2209.405-1 Continuation of current contracts.

(a) Notwithstanding the listing of a contractor for the causes set forth in these regulations, SBA may continue contracts or subcontracts in existence at the time the contractor was debarred or suspended, unless SBA's Administrator directs otherwise. A decision as to the type of termination action, if any, to be taken will be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action.

(b) SBA shall not renew current contracts or subcontracts of debarred or suspended contractors, or otherwise extend their duration, unless SBA's Administrator or the Associate Administrator for Procurement and Technical Assistance states in writing the compelling reasons for renewal or extension.

2209.405-2 Restrictions on subcontracting.

When a debarred or suspended contractor is proposed as a subcontractor for any subcontract subject to SBA's consent, approval shall not be given unless the SBA Administrator or SBA's Associate Administrator for Procurement and

Technical Assistance states in writing the compelling reasons for this approval.

2209.406 Debarment.

2209.406-1 General.

(a) The debarring official may, in the public interest, debar a contractor for any of the causes in 2209.406-2, using the procedures in 2209.406-3. The existence of a cause for debarment under 2209.406-2, however, does not necessarily *require* that the contractor be debarred; the seriousness of the contractor's acts or omissions and any mitigating factors will be considered in making any debarment decision.

(b) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarring official may extend the debarment decision to include any affiliates of the contractor if they are (1) specifically named and (2) given written notice of the proposed debarment and an opportunity to respond (see 2209.406-3(c)).

(c) A contractor's debarment shall be effective throughout the Executive Branch of the Government, unless an acquiring agency's head or a designee states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

2209.406-2 Causes for debarment.

The debarring official may debar a contractor for any of the causes listed in paragraphs (a) through (c) below:

(a) Conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—

(1) Willful failure to perform in accordance with the terms of one or more contracts; or

(2) A prolonged history of failure to perform, or of extremely unsatisfactory performance of, one or more contracts.

(c) Any other cause so serious or compelling that it affects the present responsibility of a Government contractor or subcontractor.

2209.406-3 Procedures.

(a) *Investigation and referral.* Whenever cause for debarment becomes known to a contracting officer, the matter shall be referred through the Assistant Administrator for Administration to the Associate Administrator for Procurement and Technical Assistance. Information concerning actual or suspected fraudulent or criminal conduct and other irregularities which might serve as the basis for debarment of a concern or an individual shall be forwarded by the Associate Administrator for Procurement and Technical Assistance to SBA's Office of Inspector General. Upon receipt of such reports, or upon otherwise becoming aware of such actual or suspected conduct and irregularities, the Office of Inspector General will conduct, supervise, or coordinate such investigation as that Office deems necessary and, pursuant to any such investigation, will forward a report or findings to the Associate Administrator for Procurement and Technical Assistance.

(b) *Decisionmaking process.* (1) SBA has established procedures governing the debarment decisionmaking process that are as informal as practicable, consistent with principles of fundamental fairness and due process of law. These procedures afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(2) In actions not based upon a conviction or judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, SBA shall also—

(i) Afford the contractor an opportunity to appear before its Office of Hearings and Appeals with counsel and consistent with the procedures established by that Office, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of proposal to debar.* Debarment shall be initiated by the debarring official advising the contractor and any specifically named affiliates, by certified mail, return receipt requested—

(1) That debarment is being proposed;

(2) Of the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under 2209.406-2;

(4) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;

(5) Of SBA's procedures governing debarment decisionmaking;

(6) of the potential effect of the proposed debarment; and

(7) If no suspension is in effect under 2209.407, that no contracts will be awarded to the contractor pending a debarment decision.

(d) *Debarring official's decision.* (1) In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the contractor. If no suspension is in effect under 2209.407, the decision shall be made within 30 working days after receipt of any information and argument submitted by the contractor, unless the debarring official extends this period for good cause.

(2)(i) In actions in which additional proceedings are necessary as to disputed material facts, the debarring official shall refer the matter to SBA's Office of Hearings and Appeals for findings of fact and a recommended decision. The debarring official may adopt, reject, modify or remand such decision for further appropriate findings. The debarring official shall then base the final decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(ii) In actions in which there are no material facts in dispute, a final decision and written findings of fact shall be prepared by the debarring official which shall be concurred in by the SBA's General Counsel. The final decision will be based upon the facts as found in the administrative record, together with any information and argument submitted by

the contractor and any other information in the administrative record.

(3) In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.

(e) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice by certified mail, return receipt requested—

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates (see 2209.406-4); and

(iv) Advising that the debarment is effective throughout the Executive Branch of the Government unless the head of an acquiring agency or a designee makes the statement called for by 2209.406-1(c).

(2) If debarment is not imposed, the debarring official shall promptly notify the contractor and any affiliates involved, by certified mail, return receipt requested.

2209.406-4 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed 3 years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend the debarment for an additional period, if that official determines that an extension is necessary to protect the Government's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined necessary, the procedures of 2209.406-3 above shall be followed to extend the debarment.

(c) The debarring official may reduce the period or extent of debarment, upon the contractor's request, supported by documentation, for reasons such as—

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which the debarment was based;

(3) Bona fide change in ownership or management of the debarred concern;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

2209.406-5 Scope of debarment.

(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew if, or had reason to know of the contractor's conduct.

(c) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangment may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangment or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

2209.407 Suspension.

2209.407-1 General.

(a) The suspending official may, in the public interest, suspend a contractor for any of the causes in 2209.407-2, using the procedures in 2209.407-3.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy, of the evidence, SBA will consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment will include an examination of basic documents such as contracts, inspection reports, and correspondence.

(c) Suspension constitutes suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities. The suspending official may extend the suspension decision to include any affiliates of the contractor if they are (1) specifically named and (2) given written notice of the suspension and an opportunity to respond (see 2209.407-3(c)).

(d) A contractor's suspension shall be effective throughout the Executive Branch of the Government, unless an acquiring agency's head or a designee states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

2209.407-2 Causes for suspension.

(a) The suspending official may suspend a contractor suspected, upon adequate evidence, of—

(1) Commission of fraud or a criminal offense in connection with obtaining, (i) attempting to obtain, or (ii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) Indictment for any of the causes in subsection (a) above constitutes adequate evidence for suspension.

(c) Violation of the terms of a Government contract or subcontract so serious as to justify suspension, such as—

(1) Willful failure to perform in accordance with the terms of one or more contracts; or

(2) A prolonged history of failure to perform or of extremely unsatisfactory performance of, one or more contracts.

(d) The suspending official may upon adequate evidence also suspend a contractor for any other cause so serious or compelling that it affects the present responsibility of a Government contractor or subcontractor.

2209.407-3 Procedures.

(a) *Investigation and referral.* Whenever cause for suspension becomes known to a contracting officer, the matter shall be referred through the Assistant Administrator for Administration to the Associate Administrator for Procurement and Technical Assistance. Information concerning actual or suspected fraudulent or criminal conduct and other irregularities which might serve as the basis for suspension of a concern or an

individual shall be forwarded by the Associate Administrator for Procurement and Technical Assistance to SBA's Office of Inspector General. Upon receipt of such reports, or upon otherwise becoming aware of such actual or suspected conduct and irregularities, the Office of Inspector General will conduct, supervise, or coordinate such investigation as that Office deems necessary and, pursuant to any such investigation, will forward a report or findings to the Associate Administrator for Procurement and Technical Assistance.

(b) *Decisionmaking process.* (1) SBA has established procedures governing the suspension decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness and due process. These procedures afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing or through a representative, information and argument in opposition to the suspension.

(2) In actions not based on an indictment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of the Department of Justice advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, SBA will also—

(i) Afford the contractor an opportunity to appear before SBA's Office of hearings and Appeals with counsel, submit documentary evidence, present witnesses and confront any person SBA presents; and

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of suspension.* When a contractor and any specifically named affiliates are suspended, they shall be immediately advised by the suspending official by certified mail, return receipt requested—

(1) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities (i) of a serious nature in business dealings with the Government or (ii) seriously reflecting on the propriety of further Government dealings with the contractor; any such irregularities shall be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

(2) That the suspension is for a temporary period pending the completion of an investigation and such legal proceeding as may ensue.

(3) Of the cause(s) relied upon under 2209.407-2 for imposing suspension;

(4) Of the effect of the suspension;j

(5) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over material facts; and

(6) That additional proceedings to determine disputed material facts will be conducted unless (i) the action is based on an indictment or (ii) a determination is made, on the basis of Department of Justice advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspensions would be prejudiced.

(d) *Suspending official's decision.* (1) In actions (i) based on an indictment, (ii) in which the contractor's submission does not raise a genuine dispute over material facts; or (iii) in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official's decision shall be based on all the information in the administrative record, including any submission made by the contractor.

(2)(i) In actions in which additional proceedings are necessary as to disputed material facts, the suspending official shall refer such matters to SBA's Office of Hearings and Appeals for findings of fact and a recommended decision. The suspending official may adopt, reject, modify or remand any such decision for further appropriate findings. The suspending official shall then base the final Agency decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(ii) In actions in which there are no material facts in dispute, a final decision and written findings of fact shall be prepared by the suspending official which shall be concurred in by the SBA's General Counsel. The final decision will be based upon the facts as found in the administrative record, together with any information and argument submitted by the contractor and any other information in the administrative record.

(3) The suspending official may modify or terminate the suspension or leave it in force (for example, see 2209.407-4(c) for the reasons for reducing the period or extent of debarment). However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or the imposition of debarment by any agency.

(4) Prompt written notice of the suspending official's decision shall be sent to the contractor by certified mail, return receipt requested.

2209.407-4 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings, unless sooner termination by the suspending official or as provided in this section.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of the proposed termination of the suspension, at least 30 days before the suspension period expires, to give that Department an opportunity to request an extension.

2209.407-5 Scope of suspension.

The scope of suspension shall be the same as that for debarment (see 2209.406-5), except that the procedures of 2209.407-3 shall be used in imposing suspension.

Dated: July 10, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-18313 Filed 7-16-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 40452-4078]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 13 to the fishery management plan for Groundfish of the

Gulf of Alaska. This amendment adjusts the management of the pollock resource by combining the Western and Central Regulatory Areas of the Gulf of Alaska for managing the pollock fisheries and increasing the optimum yield of pollock for the combined area from 200,000 metric tons (mt) to 400,000 mt. This action is necessary to allow management of pollock in the Western and Central Areas as a single stock. This action is intended to allow both the harvest of the increased surplus production of the pollock resource and the distribution of fishing effort according to pollock availability.

EFFECTIVE DATE: August 13, 1984.

ADDRESS: Copies of the amendment and the environmental assessment/final regulatory flexibility analysis (EA/FRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, telephone 907-274-4563.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign fisheries in the fishery conservation zone of the Gulf of Alaska are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council), and implemented December 1, 1978 (43 FR 52709, November 14, 1978). Eleven amendments to the FMP have been approved and implemented. A twelfth amendment that addresses the domestic longline fishery for sablefish has been approved by the Council, but has not yet been submitted to the Secretary of Commerce (Secretary) for review.

Amendment 13 to the FMP, the subject of this action, was adopted by the Council at its December 7-9, 1983, meeting. The amendment (1) combines the Western and Central Regulatory Areas of the Gulf of Alaska into one unit for managing the pollock fisheries only, and (2) increases the optimum yield (OY) for pollock for the combined Western-Central Area from 200,000 mt to 400,000 mt. The preamble to the proposed rule for Amendment 13 (49 FR 18144, April 27, 1984) discussed the need and justification for the amendment. This action is currently in effect through an emergency rule implemented under section 305(e) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) (49 FR 10931, March 23, 1984) and extended (49 FR 24142, June 12, 1984) through September 18, 1984.

Public Comments

Comment

One letter of comment was received during the comment period. The commenter supported this amendment.

Response

Comment noted.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary and appropriate for conservation and management of fishery resources and that it is consistent with the Magnuson Act and other applicable law.

The Council concluded that no significant impact on the environment will occur as a result of this rule. The Council's conclusion was based on the EA/FRFA prepared for the original emergency rule mentioned above.

The Administrator of NOAA determined that this rule is not major and does not require a regulatory impact analysis under Executive Order 12291. A summary of the EA/FRFA in which this determination was made was published at 49 FR 10931, March 23, 1984.

The Director, Alaska Region, NMFS, prepared a final regulatory flexibility analysis which describes the effects the initial emergency rule will have on small entities. That document is also intended to be the analysis for this final rule. You may obtain a copy of the analysis from the Council at the address listed above.

This rule does not contain a collection of information requirement for purposes of the Paperwork Education Act.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. The Alaska Office of Management and Budget has concurred in this determination.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: July 12, 1984.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 672 is amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for Part 672 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§672.20 [Amended]

2. In §672.20, Table 1, the entries for pollock and "other species" are revised to read as follows:

TABLE I.—INITIAL (AS JAN. 1, EACH YEAR) OPTIMUM YIELD (OY), DOMESTIC ANNUAL HARVEST (DAH), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS

Species	Species Code	Areas	OY	DAH	DAP	JVP	Reserve	TALFF
Gulf of Alaska Groundfish Fishery:								
Pollock	701	Western-Central[1]	400,000	219,300	9,000	210,300	80,000	100,700
		Eastern[1]	16,600	300	300	0	3,320	12,980
		Total	416,600	219,600	9,300	210,300	83,320	113,680
* * *		* * *						
Other Species[5]	499	Total	28,780	500	100	400	5,756	22,524

[1] See §672.2 and figure 1 of §611.92 for description of regulatory areas and districts.

* * *

[5] The category "other species" includes sculpins, sharks, skates, smelts, capelin, and octopus. The OY is equal to 5% of the upper range of the total OYs of the target species.

* * *

[FR Doc. 84-18872 Filed 7-12-84; 3:02 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 138
Tuesday, July 17, 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 1139

[Docket No. 374-A8]

Milk in the Lake Mead Marketing Area; Extension of Time for Filing Exceptions to Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions to proposed rules.

SUMMARY: This action extends the time for filing exceptions to a recommended decision concerning proposed amendments to the Lake Mead order. The request for additional time was submitted by an interested party who participated at the hearing.

DATES: Exceptions now are due on or before July 25, 1984.

ADDRESS: Exceptions (four 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: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing

Issued August 1, 1983; published August 5, 1983 (48 FR 35652).

Recommended Decision

Issued June 12, 1984; published June 15, 1984 (49 FR 24736).

Notice is hereby given that the time for filing exceptions to the recommended decision issued June 12, 1984 (49 FR 24736) on proposed amendments to the Lake Mead milk order is extended to July 25, 1984.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. *et. seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

List of Subjects in 7 CFR Part 1139

Milk marketing orders,
Milk,
Dairy products.

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

Signed at Washington, D.C., on July 11, 1984.

William I. Manley,
Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-18634 Filed 7-16-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PARTS 18, 24, 112, 141, 144, 146, and 191

Foreign Trade Zones; Proposed Specialized and General Provisions

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed revision.

SUMMARY: This proposed revision of the Customs Regulations relating to foreign-trade zones is undertaken essentially to incorporate a new audit-inspection method of zone supervision by Customs into those regulations. A foreign-trade zone is a defined area, considered to be outside the customs territory of the United States, where certain lawful activities can be conducted with a minimum of formalities. A zone provides a site at or adjacent to a Customs port of entry where operations involving foreign merchandise can take place which otherwise might have been done abroad for tariff and trade reasons. The proposed revision sets forth the general provisions applicable to the administration of all zones and other specialized provisions applicable to subzones and noncontiguous zone sites. In addition, changes in the language of the regulations are proposed to clarify some provisions, eliminate inconsistencies, and conform the Customs Regulations to current administrative practices.

DATE: Comments must be received on or before October 15, 1984.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229. Comments relating to the information collection aspects of the proposal should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for the U.S. Customs Service, as well as to the Commissioner of Customs, as noted above.

FOR FURTHER INFORMATION CONTACT:

General operational aspects: John Holl or Louis Razzino (202-566-8151).

Inventory control and recordkeeping system aspect: Marcus Sircus (202-566-2812).

Appraisement and valuation aspect: Myles Flynn (202-566-5307).

Liquidated damages, penalty and suspension aspect: William Lawlor (202-566-5856).

Economic aspect: Daniel Norman (202-566-5307).

All of the above Customs personnel are located at: U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Although free trade is an ancient concept, free trade zones did not develop until the 19th century. The success of free trade zones in northern Europe, notably the "free port" of Hamburg, stimulated American interest in the concept and in establishing free trade zones.

In 1934, Congress enacted the Foreign-Trade Zones Act "to expedite and encourage foreign commerce." The Act created domestic "foreign-trade zones", and was designed to stimulate international trade and create jobs in the United States. At that time, zones were envisioned as storage, manipulation, and transshipment (exportation) centers. In 1950, an emendment to the Act was passed

authorizing manufacturing and exhibition inside zones.

Foreign-trade zones (zones) are areas within the United States (but outside of the "Customs territory" of the United States, as defined in § 146.1, Customs Regulations (19 CFR 146.1)), where foreign or domestic merchandise may be brought for manipulation, manufacture, assembly or other processing, or for storage or exhibition, provided that these operations are not otherwise prohibited by law. Foreign merchandise may be brought into a zone without being subject to the usual Customs entry procedures and payment of duty. Foreign or domestic merchandise may be exported or entered into the Customs territory from a zone. Quota restrictions do not normally apply to foreign merchandise in a zone. Merchandise moved to a zone for export may be considered exported upon its admission to a zone for purposes of excise tax rebates and drawback.

Zones are established under the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C 81a–81u), and the general regulations and rules of procedure of the Foreign-Trade Zones Board (the Board), Department of Commerce (15 CFR Part 400). Part 146, Customs Regulations (19 CFR Part 146), governs the admission of merchandise into a zone; the manipulation, manufacture, or exhibition in a zone; the exportation of merchandise from a zone; and the transfer of merchandise from a zone into the Customs territory.

Typically, a foreign-trade zone is a fenced-in area with a general warehouse type building or buildings and access to all modes of transportation. Space is available for leasing to firms for authorized zone activity. Some zones have industrial park characteristics or are located within such facilities and have lots on which zone users can construct their own facilities. Subzones are sites authorized by the board through zone grantees for operations by individual firms when zone procedures are vital for an operation that is in the public interest but cannot be accompanied within an existing zone.

Between 1934 and 1970, just 12 zones were approved by the Board. At this time, there are 97 zones approved, of which 56 are in operation. In addition, there are about 30 subzones approved, of which 24 are in operation. There are pending with the Board at least 12 applications for zone approval. It has been estimated that the volume of business in zones has multiplied 50 times during the decade 1970–1980, with zones now handling about $3.5 billion worth of merchandise each year.

As can be appreciated from the foregoing, the number of zones and the operations conducted therein have increased tremendously in recent years. Historically, Customs has administered zones and their operations by the physical presence of Customs officers at the various zone locations. However, as time has passed, Customs staffing available to supervise zones has declined while zones have continued to proliferate. This has resulted in delays in the approval or activation of a given zone, and has presented problems for Customs in the exercise of effective control over some zone operations, especially subzone manufacturing activities. Therefore, Customs undertook an effort to devise a method to reduce Customs staffing requirements in zones and other areas (notably bonded warehouses) without endangering the revenue or law enforcement priorities, while also not hampering the growth of those areas and not impeding commerce.

The "audit-inspection" program approach to administration of those areas of Customs responsibility, which de-emphasizes the physical presence of a Customs officer to supervise each transaction, was successfully implemented in regard to the operation of bonded warehouses (see Treasury Decision 82–204, published in the Federal Register on November 1, 1982 (47 49355)). This notice proposes to extend the audit-inspection program, by regulation, to zones as a method of reducing Customs staffing commitment to those operations. The audit-inspection method no longer requires a Customs officer to be physically present to supervise the admission of merchandise into or removal of merchandise from a zone. The zone operator, on the other hand, has increased responsibilities for supervision, recordkeeping and other responsibilities under its bond, and must pay an activation and annual reimbursement fee. Customs will verify operator compliance with regulatory and other requirements through selective merchandise examination, and other spot checks and audits. It should be noted that Customs initiated use of the audit-inspection method in August 1983, on the basis of voluntary agreements between Customs and zone operators. At present, four subzones and one general-purpose zone have entered into voluntary agreements to use the audit-inspection method to administer their operations. Customs has endeavored to take that limited experience under the audit-inspection method applied to zones into account in preparing this revision.

This proposed revision is part of the on-going general revision of the Customs Regulations and would amend Chapter I, title 19, Code of Federal Regulations, by removing the text of present Part 146 and adding a new Part 146.

Proposed Part 146 sets forth the general regulatory provisions applicable to the administration of foreign-trade zones. Substantive changes have been made in proposed Part 146. That part will follow the same basic format as the current Part 146, but will contain changes in or additions to language to clarify the current provisions that have been retained in the revision.

Proposed (revised) Part 146 is divided into seven subparts. Following is a summary discussion of the major new changes in each of those subparts.

A general point needs to be made here; that wherever the word "days" appears in this revision, it means calendar days, unless "working days" is specified.

Subpart A—General Provisions

1. Proposed § 146.1 defines the primary terms used throughout the revision. Some of the terms are new and some follow the definitions contained in a notice of proposed rulemaking on zones issued by the Foreign-Trade Zones Board, and published in the Federal Register on February 18, 1983 (48 FR 7168). They are:

a. Activation.
b. Alteration.
c. Deactivation.
d. Conditionally admissible merchandise.
e. Prohibited article.
f. Operator.
g. Reactivation.
h. Subzone.

2. Proposed § 146.3(b) states the scope of Customs supervision exercised at a zone. That supervision *may* be physical, at the discretion of the district director. However, normal Customs supervision is envisioned to involve selective merchandise examination, other spot checks and audits.

3. Proposed § 146.4 describes the increased supervisory responsibilities of the operator over zone merchandise and for recordkeeping. That section also allows the operator to provide, or contract for, private guard service to protect the revenue.

4. Proposed § 146.5 provides that the operator or grantee of a zone will be charged a nonrefundable fee for activation of a zone or any portion thereof, or to alter or relocate a zone. Moreover, the operator of a zone will be charged a nonrefundable annual fee for

each activated zone as payment for the cost of additional Customs service required by law. The fee schedule would be revised annually and published in the Customs Bulletin and the Federal Register. Examples of fees established for 1983 and 1984 under the voluntary audit-inspection program are:

Activation

1. General-Purpose Zone—$1,020.
2. Subzone or noncontiguous zone site—$1,960.

Alteration—$360 per site.

Annual

1. Small zone (under $10 million volume)—$2,600.
2. Large zone (over $10 million volume)—$7,600.

A special fee for certain large subzones is tailored to each according to its size and other characteristics. Examples of the calculation of activation and alteration fees, and annual fees are included in this document as Appendices A and B, respectively. Those examples are taken from guidelines prepared by Customs as part of the voluntary audit-inspection program method and the acceptance by operators of the agreements corresponding to that program.

5. Proposed § 146.6 establishes the procedure for activation of a zone, including the required application, and actual activation.

6. Proposes § 146.7 describes the procedures to be followed when the following zone changes occur:

a. Boundary modification.
b. Alteration of an activated area.
c. Deactivation or reactivation.
d. Suspension of all or part of an activated area.
e. New bond required by district director.
f. New operator.
g. Demand by district director for list of zone officers, employees, and other persons.

7. Proposed § 146.8 authorizes the operator to affix or break a Customs seal on a vehicle or container arriving at or leaving a zone. That section also obligates the operator to notify the district director of any broken, missing, or improperly affixed seal.

8. Proposed § 146.9 allows the operator to grant permission for zone operations, rather than the grantee. This conforms the regulations to current practice.

9. Proposed § 146.13 establishes the procedure necessary for an operator of a subzone or a noncontiguous zone site to follow if that operator wants to: (1) Self-verify the quantity of merchandise admitted to the zone, and (2) accept responsibility for supervision of removal of zone merchandise on entries for consumption, transportation, or transportation and exportation. This section details the application procedure, including the criteria the district director will consider before a decision on the operator's application. As this section qualifies an operator to use maximum flexibility and independence in its activities, and is cross-referenced to other proposed sections which offer radical departures from current zone administration, it is recommended for especially close consideration by commenters.

10. Proposed § 146.14 states the conditions necessary to be met before certain domestic status merchandise may be admitted to a zone without prior application and permit for each shipment.

11. Proposed § 146.15 describes the procedure to be followed when merchandise from a subzone more than 35 miles from the limits of an adjacent port of entry is to be admitted to or removed from the subzone. Liquidated damages are prescribed for losses.

12. Proposed § 146.16 allows an operator to apply to the district director for permission to have zone merchandise examined not at the zone, but at another place within the limits of the port where the zone is located.

13. Proposed § 146.17 specifies that records required by this revision be retained at the zone for at least 5 years after the date of entry of the subject merchandise that is removed from the zone.

Subpart B—Inventory Control and Recordkeeping System

This proposed subpart is entirely new. It is essential to the audit-inspection method of zone supervision, and given the greatly increased operator responsibility for recordkeeping, it should be carefully studied by commenters.

1. Proposed § 146.21 sets forth the general requirements for an inventory control and recordkeeping system, including the system capability, procedures manual, and the responsibility of the *operator* to ensure that its system meets regulatory requirements. Customs *will not* approve or disapprove a system.

2. Proposed § 146.22 provides the system requirements for admission of merchandise to a zone.

3. Proposed § 146.23 provides the system requirements for basic accountability of merchandise in a zone.

4. Proposed § 146.24 provides the system requirements for removal of merchandies from a zone.

5. Proposed § 146.25 provides the requirement for an annual reconciliation prepared by the operator along with its certification that the reconciliation is accurate, and available for review by Customs.

6. Proposed § 146.26 states the operator's obligation to perform an annual internal review of its system and to notify Customs of any deficiency discovered and corrective action taken.

Subpart C—Admission of Merchandise to a Zone

1. Proposed § 146.31 describes merchandise permitted in a zone, and differentiates between a prohibited article (not permitted) and conditionally admissible merchandise (permitted under condition).

2. Proposed § 146.32(b)(1) requires that among the supporting documents to be filed with an application for admission of merchandise to a zone, the operator shall submit two copies of an invoice or similar commercial document.

3. Proposed § 146.32(b)(5) authorizes the district director to require any additional information or documentation needed to conduct an examination of merchandise to be admitted, or to determine the admissibility of that merchandise.

4. Proposed § 146.32(c)(3) states that one of the conditions for issuance of a permit for admission of merchandise to a zone is that the merchandise be retained for examination at the place of unlading, the zone, or other place designated by the district director, except where direct delivery to a subzone or zone site is authorized.

5. Proposed § 146.32(d) provides for a blanket application for admission of merchandise to a zone (rather than a separate application of each admission), when certain specified criteria are met.

6. Proposed § 146.35 allows for the temporary deposit of merchandise in a zone for 5 working days, upon approval of an application by the district director, when documentation is incomplete. However, certain conditions specified in that section must be met, and the operator must submit complete documentation to Customs within the 5-working day period of temporary deposit.

7. Proposed § 146.36 reserves to Customs the right to examine any merchandise at the place of unlading, the zone, or other place designated by the district director. However, the section also states that the district director may authorize release of the merchandise without examination.

8. Proposed § 146.37 describes the responsibility of the operator for the maintenance of admission documentation, its liability for the receipt of merchandise, and its duty to supervise the receipt of merchandise into the zone (when authorized by the district director).

9. Proposed § 146.38 provides that Customs will now authorize for delivery of merchandise in lieu of certifying arrival of merchandise at a zone.

10. Proposed § 146.39 states that once the district director has approved a blanket application for the admission of certain domestic status merchandise, no other application for admission of that merchandise will be accepted. For domestic status merchandise not covered by an approved application for blanket admission, an application for each admission will be required on Customs Form 214.

11. Proposed § 146.40 sets forth the special procedures for admission of merchandise to a subzone or noncontiguous zone site. The district director may allow the direct delivery of merchandise without prior application or approval of Customs Form 214 and without Customs examination, if the operator qualifies uder proposed § 146.13. The operator handles the arrival of the merchandise on the conveyance, completing the documentation formalities and notifying the district director of any irregularities. The operator has its option of filing either a cumulative Customs Form 214 for merchandise received each business day, or an individual Customs Form 214 for each shipment received on a given business day. Merchandise which arrives at a subzone or zone site must be formally admitted within 5 working days or it will be sent to general order, unless the district director grants an extension of that time period or the operator enters the merchandise and removes it from the premises. In addition, the operator generally assumes responsibility for the manifested quantity of merchandise, and must maintain an in-bond mainfest file of incomplete shipments as well as a continuing in-put quality control program for its inventory and recordkeeping system.

Subpart D—Status of Merchandise in a Zone

The major new change of substance in this revised subpart is that a Customs Form 7502 will no longer be required to be filed on election of privileged foreign status for merchandise. There also has been a change in organization to include the concept of what previously was separately designated "privileged domestic merchandise," in proposed § 146.43 that is now entitled only "Domestic merchandise."

Subpart E—Handling of Merchandise in a Zone

1. Proposed § 146.52(a)(2) provides for the approval by the district director of a blanket application for a continuous or repetitive manipulation, manufacture, or exhibition for a period up to one year.

2. Proposed § 146.52(d)(2) provides that in lieu of the approved Customs Form 216 for manipulation or manufacture of merchandise, an operator may be granted approval of a blanket application and must maintain a record in its inventory control and recordkeeping system which provides an audit trail of the merchandise under blanket approval through the approved operation.

3. Proposed § 146.52(c) requires that the operator shall certify a destruction of zone merchandise on Customs Form 216, and also maintain the report in its inventory control and recordkeeping system.

4. Proposed § 146.54 states explicitly that it is the operator that is responsible for the security of merchandise in a zone (including storage and handling), and for the maintenance of records pertaining to that merchandise.

5. Proposed § 146.55 relates to a shortage or overage of merchandise in a zone, and damage to merchandise in a zone. Much of the material in the section is new, specifically:

a. A report by the operator to the district director is required in the case of thefts or excess merchandise discovered in a zone;

b. The operator must record all shortages, overages, and damage, in its inventory control and recordkeeping system;

c. The liability of the operator under its bond for the shortages of merchandise, and liability for duty and taxes;

d. The treatment of merchandise that is considered an overage; and

e. The adjustment of the operator's liability under its bond for damage to merchandise.

Subpart F—Removal of Merchandise From a Zone

1. Proposed § 146.61 provides that merchandise may be considered constructively transferred to Customs territory without the necessity to file a Customs Form 215, but upon presentation of any entry document.

2. Proposed § 146.62, "Right to make entry," takes its content from the definition of who may make entry contained in Pub. L. 97-446.

3. Proposed § 146.63(b)(2) provides that when an entry for consumption is made for merchandise to be removed from a subzone or noncontiguous zone site approved under proposed § 146.13, the district director may allow the importer to file an entry on Customs Form 3461 for the *estimated* removal of merchandise during the calendar week. The entry must be accompanied by a *pro forma* invoice covering the merchandise to be removed during the week and its value. If the merchandise actually removed exceeds the estimate, a supplemental entry must be filed to cover the additional merchandise *before* its removal from the subzone or zone site.

4. Proposed § 146.63(c) specifies that either a daily entry summary or, in the case of a subzone or noncontiguous zone site approved under proposed § 146.13, a weekly entry summary, may be filed for merchandise removed from a zone.

5. Proposed § 146.63(d) provides that except for a statement of the quantity, zone status and value, and dutiable value of merchandise covered by an entry summary, the district director may waive presentation of an invoice and supporting documentation with the entry or entry summary.

6. Proposed § 146.64(c) specifies that an entry of zone merchandise for warehouse must be made within the time limit provided for in 19 U.S.C. 1557(a), *i.e.*, five years from date of importation.

7. Proposed § 146.65(a) provides that Customs may examine any merchandise on its removal from a zone. The section also states that all requirements and restrictions applicable to imported merchandise may also apply to merchandise constructively transferred to Customs territory from a zone.

8. Proposed § 146.65(b) allows for the classification of foreign merchandise at the time of the filing of an entry or entry summary with Customs.

9. Proposed § 146.65(c)(2) provides for the determination of the dutiable value of merchandise removed from a zone, reflecting the cost or value of components having a foreign status, exclusive of any costs of processing or fabrication in the zone.

10. Proposed § 146.66 states the documentation requirements for entry of merchandise for transportation to another port.

11. Proposed § 146.67(b)(1) states the procedure to be followed when zone merchandize (other than domestic status

merchandise) is transferred from one zone to another at the same port.

12. Proposed § 146.67(d) describes the procedure to be followed when zone merchandise (other than domestic status merchandise) arrives at the destination zone at the same or at another port.

13. Proposed § 146.69 sets forth the procedures applicable to merchandise removed from a subzone or noncontiguous zone for transportation or exportation. The district director may allow a person with the right to make entry to file an application for a weekly permit to enter and release merchandise during a calendar week. The application must be accompanied by a *pro forma* invoice or other satisfactory documentation. After approval, that person would be able to execute individual entries for merchandise covered by the weekly permit. However, the person with the right to make entry must file shortly thereaafter with the district director a statement of all merchandise entered under the approved weekly permit.

14. Proposed § 146.71(c) provides that zone-restricted merchandise may be returned to Customs territory for warehousing in accordance with Treasury Decision 83–139, published in the Federal Register on June 16, 1983 (48 FR 27536).

15. Proposed § 146.72(c) states that domestic status merchandise may be transferred into the Customs territory by means of a blanket submission prepared by the operator and filed with Customs on the next working day after that merchandise was removed from the zone. It is also noted in the section that certain domestic status merchandise admitted to a zone under the procedure described in proposed § 146.14 may be removed from a zone without Customs permit.

16. Proposed § 146.73 governs the general release and removal of merchandise from a zone. As a normal rule, no merchandise may be removed from a zone without a Customs permit on the appropriate entry or withdrawal form or other required document. In general, the operator will be held liable, absent an adjustment, for the quantity of merchandise in a zone shown on the entry, withdrawal or other document. The operator will be relieved of responsibility for the merchandise on receipt of the removal document signed by the carrier or importer. Merchandise for which a Customs permit has been issued must be segregated from other zone merchandise, not further manipulated or manufactured, and must be removed from the zone premises within 5 working days after the permit is issued. Of special note is a provision in this section (paragraph (d)(i)) which allows merchandise entered for consumption (and duty paid) to remain in the zone with the permission of the district director, subject to certain detailed conditions (*e.g.*, no further processing). Furthermore, paragraph (d)(2) allows the restoration to former zone status of a component of merchandise entered because of clerical error, mistake of fact, or other indvertance not amounting to an error in the construction of the law. If the district director decides that there has been no error, *etc.*, then the component will be treated as an overage. Paragraph (d) of proposed § 146.72 was drafted to remedy certain problems encountered in administration of manufacturing subzones, and should be carefully studied by commenters.

Subpart G—Liquidated Damages; Penalties; Suspension; Revocation

This subpart is entirely new.

1. Proposed § 146.81 sets forth the operator's liability under its bond for liquidated damages for defaults involving certain merchandise (three times the value of the merchandise) or any of the terms and conditions of that bond ($200 maximum for each default). In addition, that section provides for the imposition of liquidated damages for a default by the principal in respect to tardy payment of the annual fee.

2. Proposed § 146.82 provides for a fine of $1,000 for each violation of the Foreign-Trade Zones Act of 1934, as amended (Act), or any regulations issued thereunder. Each day a violation continues will constitute a separate offense. Any penalty assessed may be augmented by applicable liquidated damages. All fines imposed by the district director will be reviewed at Customs Headquarters.

3. Proposed § 146.83 provides for the suspension by the district director, for cause enumerated in that section, of the activated status of a zone or zone site, for a period generally not to exceed 30 days. Prior to the suspension a notice and hearing procedure set forth in the section must be followed. The regional commissioner of the region in which the zone is located is charged with making the final Customs administrative decision in the matter.

4. Proposed § 146.84 provides for a recommendation by the district director to the Foreign-Trade Zones Board that the zone or subzone grant be revoked by the Board for willful and repeated violations of the Act. A recommendation for grant revocation may be made in addition to any applicable liquidated damages, penalty, or suspension of activation for cause.

Editorial and Conforming Changes

Throughout the revision, numerous editorial changes have been made to clarify and simplify the language contained in the foreign-trade zone regulations. Furthermore, changes in other parts of the Customs Regulations have been proposed to conform them to the proposed revision of Part 146.

Comments

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

Executive Order 12291

The proposed regulation is not a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604), are applicable to this proposal. Accordingly, an initial regulatory flexibility analysis prepared by Customs is attached to this document as Appendix C. Comments on the analysis are also solicited and should accompany comments submitted on the proposal.

Paperwork Reduction Act

The proposed regulation is subject to the Paperwork Reduction Act of 1980, Pub. L. 96–511 (44 U.S.C. 3504(h)). Accordingly, applicable sections of this document have been submitted to the Office of Management and Budget. Comments on the collection of information requirements contained in this document should be directed to the Office of Information and Regulatory Affairs, OMB, Washington, D.C., 20503, ATTN: Desk Officer for the U.S. Customs Service. Customs also requests that copies of those comments be sent to Customs at the address previously specified.

Drafting Information

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

List of Subjects in 19 CFR Part 146

Customs duties and inspection, Exports, Foreign-trade zones, Imports.

Proposed Revision to the Customs Regulations

Under the authority of 5 U.S.C. 301, R.S. 251, as amended (19 U.S.C. 66), secs. 1–21, 48 Stat. 998, 999, as amended, 1000, 1001, 1002, as amended, 1003 (19 U.S.C. 81a–81u), 77A Stat. 14 (Gen. Hdnote 11) (19 U.S.C. 1202), secs. 623, as amended, 624, 46 Stat. 759 (19 U.S.C. 1623, 1624), and 96 Stat. 1051 (31 U.S.C. 9701), it is proposed to amend the Customs Regulations as set forth below:

It is proposed to amend Chapter I, Title 19, Code of Federal Regulations, by revising Part 146 to read as follows:

PART 146—FOREIGN-TRADE ZONES

Sec.
146.0 Scope.

Subpart A—General Provisions

146.1 Definitions.
146.2 District director as Board representative.
146.3 Customs supervision.
146.4 Operator supervision.
146.5 Activation fee and annual fee.
146.6 Procedure for activation.
146.7 Zone changes.
146.8 Seals; affixing and breaking.
146.9 Permission of operator.
146.10 Authority to examine merchandise.
146.11 Transportation of merchandis to a zone.
146.12 Use of zone by carrier.
146.13 Special procedure for subzone and noncontiguous zone site.
146.14 Special provision for certain domestic status merchandise.
146.15 Subzone distant from adjacent port of entry.
146.16 Place of examination outside zone.
146.17 Record retention.

Subpart B—Inventory Control and Recordkeeping System

146.21 General requirements.
146.22 Admission of merchandise to a zone.
146.23 Accountability for merchandise in a zone.
146.24 Removal of merchandise from a zone.
146.25 Annual reconciliation.
146.26 System review.

Subpart C—Admission of Merchandise to a Zone

146.31 Merchandise permitted in a zone.
146.32 Application and permit for admission of merchandise.
146.33 Temporary deposit for manipulation.
146.34 Merchandise transiting a zone.
146.35 Temporary deposit in a zone; incomplete documentation.
146.36 Examination of merchandise.
146.37 Operator responsibility.
146.38 Certificate of arrival of merchandise.
146.39 Domestic merchandise.
146.40 Subzone and noncontiguous zone site.

Subpart D—Status of Merchandise in a Zone

146.41 Privileged foreign merchandise.
146.42 Nonprivileged foreign merchandise.
146.43 Domestic merchandise.
146.44 Zone-restricted merchandise.

Subpart E—Handling of Merchandise in a Zone

146.51 Customs control of merchandise.
146.52 Manipulation, manufacture, or exhibition.
146.53 Destruction.
146.54 Safekeeping of merchandise and records.
146.55 Shortage, overage, and damage.

Subpart F—Removal of Merchandise From a Zone

146.61 Constructive transfer to Customs territory.
146.62 Right to make entry.
146.63 Entry for consumption.
146.64 Entry for warehouse.
146.65 Examination, classification, valuation, and liquidation.
146.66 Entry for transportation to another port.
146.67 Transfer from one zone to another.
146.68 Removal for exportation.
146.69 Removal for transportation or exportation; subzone or noncontiguous zone site.
146.70 Supplies, equipment, and repair material for vessels or aircraft.
146.71 Transfer of zone-restricted merchandise into Customs territory.
146.72 Transfer of domestic merchandise into Customs territory.
146.73 Release and removal of merchandise from zone.

Subpart G—Liquidated Damages; Penalties; Suspension; Revocation

146.81 Liquidated damages.
146.82 Penalties.
146.83 Suspension.
146.84 Revocation of zone grant.

Authority: R.S. 251, secs. 1–21, 48 Stat. 998, 999, as amended, 1000, 1001, 1002, as amended, 1003, 77A Stat. 14, sec. 623, as amended, 624, 46 Stat. 759; 19 U.S.C. 66, 81a–81u, 1202 (Gen. Hdnote 11), 1623, 1624; sec. 501, 96 Stat. 1051; 31 U.S.C. 9701. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

§ 146.0 Scope.

Foreign-trade zones are established under the Foreign-Trade Zones Act and the general regulations and rules of procedure of the Foreign-Trade Zones Board contained in 15 CFR Part 400. This Part 146 of the Customs Regulations governs the admission of merchandise into a foreign-trade zone, manipulation, manufacture, exhibition, destruction, or storage in a zone; inventory control and recordkeeping system in a zone; exportation of merchandise from a zone; and transfer of merchandise from a zone into Customs territory.

Subpart A—General Provisions

§ 146.1 Definitions.

The following are general definitions for the purposes of this part:

(a) *Act.* "Act" means the Foreign-Trade Zones Act of June 18, 1934, as amended (48 Stat. 998–1003; 19 U.S.C. 81a–81u).

(b) *Activation.* "Activation" means approval by the grantee and district director for operations and for the admission and handling of merchandise in zone status. An area in a zone which is not activated will be considered part of the Customs territory.

(c) *Alteration.* "Alteration" means a change in the boundaries of an activated zone or subzone; activation of a separate noncontiguous site of an already-activated zone or subzone with the same operator at the same port; or the relocation of an already-activated site with the same operator.

(d) *Board.* "Board" is the Foreign-Trade Zones Board established by the Foreign-Trade Zones Act to carry out the provisions of the Act.

(e) *Customs territory.* "Customs territory" is the territory of the United States in which the general tariff laws of the United States apply but which is not included in the activated portion of any zone. "Customs territory of the United States" includes only the States, the District of Columbia, and Puerto Rico. (Gen. Hdnote. 2, Tariff Schedules of the United States (19 U.S.C. 1202)).

(f) *Deactivation.* "Deactivation" means voluntary discontinuation of the activation of an entire zone or subzone site by the grantee or operator. Discontinuance of the activated status of only a part of a site is treated as an alteration.

(g) *Grantee.* "Grantee' is a corporation to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted by the Foreign-Trade Zones Board.

(h) *Merchandise.* "Merchandise" includes goods, wares and chattels of every description, except prohibited articles. Building materials, production equipment, and supplies for use in operation of a zone are not "merchandise" for the purposes of this part.

(1) *Domestic merchandise.* "Domestic merchandise" is merchandise which has been—

(i) Produced in the United States and not exported therefrom, or

(ii) Previously imported into Customs territory and properly released from Customs custody.

(2) *Foreign merchandise.* "Foreign merchandise" is imported merchandise which has not been properly released from Customs custody in customs territory.

(3) *Conditionally admissible merchandise.* "Conditionally admissible merchandise" is merchandise which may be imported into the United States under certain conditions. Merchandise which is subject to permits or licenses, or which may be reconditioned to bring it into compliance with the laws administered by various Federal agencies, is an example of conditionally admissible merchandise.

(4) *Prohibited article.* "Prohibited article" is an article the importation of which into the United States is prohibited by law on grounds of public policy or morals, or any article which is excluded from a zone by order of the Board. Books urging treason or insurrection against the United States, obscene pictures, and lottery tickets are examples of prohibited articles.

(i) *Operator.* "Operator" is a corporation, partnership, or person that operates a zone, noncontiguous activated zone site, or a subzone. An operator's responsibilities and functions are covered in an operating agreement with the grantee, which can contract for the operation and maintenance of a zone or a zone activity, but cannot assign the grant of authority itself Those agreements are subject generally to the Act and regulations and should include the terms between the parties concerning such matters as the time length of the agreement and termination provisions, as well as the responsibilities for dealing with the Customs Service. The district director's concurrence is required for the party designated "operator" to be recognized as such. A firm that is the sole occupant of a noncontiguous zone site or a subzone may be designated by the grantee as an operator. Where used in this part, the term "operator" also applies to a "grantee" that operates its own zone.

(j) *Reactivation.* "Reactivation" means a resumption of the activated status of an entire area that was previously deactivated without any change in the operator or the area boundaries. If the boundaries are different, the action is treated as an alteration. If the operator is different, it is treated as an activation.

(k) *Subzone.* "Subzone" is a special-purpose ancillary zone site authorized by the board through grantees of public zones, for operations by individual firms that cannot be accommodated within an existing zone, when it can be demonstrated that the activity, usually manufacturing, will result in a significant public benefit. It is considered a noncontiguous extension of a zone for a single user, usually at its own facility and, in this sense, is a private rather than a public zone facility. A separate zone site within an industrial or commercial complex subject to common management and covenants is part of a zone, rather than a subzone.

(l) *Zone.* "Zone" is a foreign-trade zone established under the Foreign-Trade Zones Act. Where used in this part, the term also applies to a subzone, unless specified otherwise.

§ 146.2 District director as Board representative.

The district director in whose district the zone is located shall be in local charge of the zone as the resident representative of the Board.

§ 146.3 Customs Supervision.

(a) *Assignment of Customs officers.* Customs officers will be assigned or detailed to a zone as necessary to maintain appropriate Customs supervision of merchandise and records pertaining thereto in the zone, and to protect the revenue.

(b) *Supervision.* Customs supervision over any zone or transaction provided for in this part will be in accordance with § 161.1 of this chapter. The district director may direct a Customs officer to supervise any transaction or procedure at a zone. Supervision may be performed through a periodic audit of the operator's records, quantity count of goods in a zone inventory, spot check of selected transactions or procedures, or review of recordkeeping, security, or conditions of storage in a zone. The operator shall permit any Customs officer access to a zone at any reasonable hour.

§ 146.4 Operator supervision.

(a) *Supervision.* The operator shall supervise all admissions, removals, recordkeeping, manipulations manufacturing, destruction, exhibition, physical and procedural security, and conditions of storage in the zone as required by law and regulation. Supervision by the operator shall be that which a prudent manager of a storage, manipulation, or manufacturing facility would be expected to exercise, and may take into account the degree of supervision exercised by the zone firm having physical possession of zone merchandise.

(b) *Guard service.* The operator is authorized to provide guards or contract for guard service to safeguard the merchandise and ensure the security of the zone (section 146.54). This authorization does not limit the authority of the district director to assign Customs guards to protect the revenue under section 4 of the Act (19 U.S.C. 81d).

§ 146.5 Activation fee and annual fee.

The operator, or where there is no operator, the grantee, will be charged a nonrefundable fee to activate a zone or any portion of a zone, or to alter or relocate an activated portion of a zone, under the provisions of 31 U.S.C. 9701. The operator of an activated zone will be charged a nonrefundable annual fee for each activated zone as payment of the cost of the additional Customs service required under the Act, as provided in 19 U.S.C. 81n on the regulations in this part. The operator or grantee shall pay the annual fee to the district director of Customs of the district in which the zone is located within 14 days after activation and within 14 days after the effective date of the published fee schedule of each year thereafter that the area remains activated. The fee schedule will be revised annually and published in the Federal Register and the Customs Bulletin.

§ 146.6 Procedure for activation.

(a) *Application.* A zone operator, or where there is no operator, a grantee, shall make written application to the district director of the district in which the zone is located to obtain approval of activation of a zone or zone site. The application must include a description of all the zone sites covered by the application, any operation to be conducted therein, and a statement of the general character of the merchandise to be admitted.

(b) *Supporting documents.* The application must be accompanied by the following:

(1) The application fee required by § 146.5 of this part;

(2) A blueprint of the area approved by the Board to be activated showing area measurements, including all openings and buildings; and all outlets, inlets, and pipelines to any tank for the storage of liquid or similar product, that portion of the blueprint certified to be correct by the operator of the tank;

(3) A gauge table, when appropriate, showing the capacity in the appropriate

unit, of any tank certified to be correct by the operator of the tank;

(4) An executed Foreign-Trade Zone Operator's Bond on Customs Form 301 containing the bond conditions of § 113.73 of this chapter;

(5) A procedures manual describing the inventory control and recordkeeping system that will be used in the zone, certified by the operator or grantee to meet the requirements of Subpart B; and

(6) The written concurrence of the grantee, when the operator applies for activation, in the requested zone activation.

(c) *Inquiry by district director.* As a condition of approval of the application, the district director may order an inquiry by a Customs officer into:

(1) The qualifications, character, and experience of an operator and/or grantee and their principal officers; and

(2) The security, suitability, and fitness of the facility to receive merchandise in a zone status.

(d) *Decision of the district director.* The district director shall promptly notify the applicant in writing of his decision to approve or deny the application to activate the zone. If the application is denied, the notification will state the grounds for denial which need not be limited to those listed in section 146.83 of this part. The decision of the district director will be the final Customs administrative determination in the matter. The applicant may seek review by the Board of the decision to deny the application within 10 days after receipt of the notification.

(e) *Activation.* Upon the district director's approval of the application and acceptance of the executed bond, the zone or zone site will be considered activated, and merchandise may be admitted to the zone. Execution of the bond by an operator does not lessen the liability of the grantee to comply with the Act and implementing regulations.

§ 146.7 Zone changes.

(a) *Boundary modification.* A modification of a zone boundary involving a significant expansion of zone operations will be approved in accordance with the procedure established in the regulations of the Board (15 CFR Part 400). A boundary modification which is not significant may be approved by the Executive Secretary of the Board with the concurrence of the district director. The district director shall provide that concurrence, where warranted, in writing to the Executive Secretary and the applicant.

(b) *Alteration of an activated area.* An operator shall make written application to the district director for approval of an alteration of an activated area, including an alteration resulting from a zone boundary modification. The application must be accompanied by the fee required in § 146.5 and the other requirements specified in § 146.6. The district director may review the security, suitability, and fitness of the area, and shall reply to the applicant as provided for in § 146.6.

(c) *Deactivation or reactivation.* A grantee, or an operator with the concurrence of a grantee, shall make written application to the district director for deactivation of a zone site, indicating by layout or blueprint the exact site to be deactivated. No fee is required for deactivation. The district director shall not approve the application unless all merchandise in the site in zone status has been removed at the risk and expense of the operator. The district director may require an accounting of all merchandise in a zone as a condition of approving the deactivation. A zone may be reactivated using the above procedure if a sufficient bond is on file under § 146.6(b)(4).

(d) *Suspension.* When approval of an activated area has been suspended through the procedure in Subpart G, the district director may require all goods in that area to be transferred to another zone, a bonded warehouse, or other location, where they may lawfully be stored, if the district director considers that transfer advisable to protect the revenue or administer any Federal law or regulation.

(e) *New bond.* The district director may require an operator to furnish on 10 days notice a new Foreign-Trade Zone Operator's Bond on Customs Form 301. If the operator fails to furnish the new bond, no more merchandise will be received in the zone and that merchandise therein will be removed at the risk and expense of the operator. A new bond may be required if the activated zone area is substantially altered; the character of merchandise admitted to the zone or operations performed in the zone are substantially changed; a new operator is authorized by the grantee; the existing bond lacks good and sufficient surety; or for any other reason that substantially affects the liability of the operator under the bond. Although a new bond may not be required, the operator shall obtain the consent of the surety to any material alteration in the boundaries of the zone.

(f) *New operator.* A grantee of an activated zone site shall make written application to the district director for approval of a new operator, submitting with the application a copy of the proposed operating agreement, a certification by the new operator that the inventory control and recordkeeping system meets the requirements of subpart B, and a copy of the system procedures manual if different from the previous operator's manual. The district director may order an inquiry into the qualifications, character, and experience of the operator and its principal officers. The bond in § 146.6(b)(4) shall be submitted by the operator before the operating agreement may become effective. The district director shall promptly notify the grantee in writing of the approval or disapproval of the application.

(g) *List of officers, employees, and other persons.* The district director may make a written demand upon the operator to submit, within 30 days after the date of the demand, a written list of the names, addresses, social security numbers, and dates and places of birth of all officers and persons having a direct or indirect financial interest in the operator; and of all persons employed in the carriage, receipt or delivery of merchandise in zone status, whether employed by the zone operator or a zone tenant. If a list was previously furnished, the district director may make a written demand for the same information in respect to new persons employed in the carriage, receipt, or delivery of zone status merchandise within 10 days after such employment. The list need not include employees of common or contract carriers transporting goods to or from the zone.

§ 146.8 Seals; affixing and breaking.

The district director may authorize an operator to break a Customs in-bond seal affixed under § 18.4 of this chapter, or under any Customs order or directive, on any vehicle or container of district director approved for admission to the zone upon its arrival at the zone; or affix a Customs in-bond seal to any vehicle or container of merchandise for which an entry, withdrawal, or other approval document has been obtained for movement in bond from the zone. The authorized affixing or breaking of that seal will be considered to have been done under Customs supervision. The operator shall report to the district director, upon arrival of the vehicle or container at the zone, any seal found to be broken, missing, or improperly affixed, and hold the vehicle or container and its contents intact pending instructions from the district director. If the operator does not obtain the written concurrence of the carrier as to the condition of the seal or delivering conveyance, the district director shall deem the seal or delivering conveyance to be intact.

§ 146.9 Permission of operator.

An application for permission to tranfer merchandise into a zone, or to do anything involving merchandise in a zone must include the written concurrence of the operator, except where the regulations of this part provide for the making of application by the operator itself or where the operator files a separate specific or blanket approval. The written concurrence of the operator in the removal of merchandise from a zone is not required, because the merchandise is released by the district director to the operator for delivery from the zone, as provided in § 146.73(a).

§ 146.10 Authority to examine merchandise.

The district director may cause any merchandise to be examined before or at the time of admission to a zone, or at any time thereafter, if the examination is considered necessary to facilitate the proper administration of any law, regulation, or instruction which Customs is authorized to enforce.

§ 146.11 Transportation of merchandise to a zone.

(a) *From outside Customs territory.* Merchandise may be brought directly to a zone from any place outside Customs territory.

(b) *Through Customs territory; foreign merchandise.* Foreign merchandise destined to a zone and transported in bond through Customs territory will be subject to the laws and regulations applicable to other merchandise transported in bond between two places in Customs territory.

(c) *From Customs territory; domestic merchandise.* Domestic merchandise may be brought to a zone from Customs territory by any means of transportation which will not interfere with the orderly conduct of business in the zone.

(d) *From a bonded warehouse.* Merchandise may be withdrawn from a bonded warehouse under the procedure in § 144.37(g) of this chapter and transferred to a zone in the same or at a different port for admission in zone-restricted status.

§ 146.12 Use of zone by carrier.

(a) *primary use; lading and unlading.* The water area docking facilities, and any lading and unlading stations of a zone are intended primarily for the unlading of merchandise into the zone or the lading of merchandise for removal from the zone. Their use for other purposes may be terminated by the Commissioner of Customs if found to endanger the revenue or by the Board if found to impede the primary use of the zone.

(b) *Carrier in zone not exempt from law or regulation.* Nothing in the Act or the regulations in this part shall be construed as excepting any carrier entering, remaining in, or leaving a zone from the application of any other law or regulation.

§ 146.13 Special procedure for subzone and noncontiguous zone site.

(a) *Application.* An operator of a subzone or noncontiguous zone site, desiring to verify a count of its own merchandise upon admission to the zone and carry out the special procedures of Subparts C and F (see §§ 146.40, 146.63, 146.69) shall file a written application with the district director at least 30 days before the special procedure is to become effective. The application will describe the merchandise to be handled or processed, and the kind of operation which it will undergo.

(b) *Criteria.* The district director shall approve the application if the following criteria are met:

(1) The operator has made an arrangement to transmit statistical information directly to the Bureau of the Census, relieving Customs of the responsibility of collecting the information on Customs Form 214–A;

(2) The merchandise to be admitted to the zone, and the operations to be conducted therein, are known well in advance, are predictable and stable over the long term, and are relatively fixed in variety by the nature of the business conducted at the site;

(3) The operator owns or has a share in the ownership of the merchandise brought into the zone, or has decision-making authority over whether the merchandise may be accepted for shipment to the zone;

(4) The merchandise is not restricted or sensitive or of a type which requires Customs examination or documentation review before or upon its arrival at the zone; and

(5) The site is a subzone, or a noncontiguous zone site operated and occupied by a single enterprise (whether or not that enterprise consists of more than one separate but relegated legal entity). A zone area which is in, or abuts, a general purpose zone site may be considered "noncontiguous" if:

(i) It is separated from the rest of the general purpose site by a barrier meeting Customs cargo security standards set in T.D. 72–56;

(ii) There are no openings in the barrier for the movement of merchandise or persons between that area and the rest of the general purpose site; and

(iii) All merchandise for the area is received directly into, and delivered directly from, that area without passing through any other activated area of the general purpose site.

(c) *Decision on application.* The district director shall promptly notify the operator in writing of Customs decision on the application. If the decision is to deny the application, the district director shall specify the reason for denial in his reply. The district director's decision will constitute the final Customs' administrative determination concerning the application.

(d) *Revocation of approval.* Approval of the application will not affect the right of a Customs officer to examine the merchandise at any time it is under Customs custody or control. The district director may revoke the approval given under this section if it becomes necessary for Customs routinely to examine the merchandise or documentation before or upon admission to the zone.

§ 146.14 Special provision for certain domestic status merchandise.

(a) *Appliction.* A prospective applicant for admission of domestic merchandise (§ 146.39) may make written application to the district director to allow the merchandise to be admitted to a zone without prior application and permit for each individual shipment.

(b) *Criteria.* The district director shall approve the application if:

(1) The applicant has made an agreement with the Bureau of the Census for direct transmittal to that agency of statistical information on the merchandise and Customs consequently need not collect and transmit a Customs Form 214–A to Census;

(2) Merchandise commercially identical to the merchandise covered by the application is not, nor will be received in the zone in a foreign or zone-restricted status;

(3) Domestic merchandise will not be mixed, combined or manufactured with foreign merchandise in such a way as to lose its identity;

(4) The merchandise is not a prohibited article;

(5) The operator has given written approval of the application; and

(6 The district director does not consider the prior application and permit for admission of the merchandise to be necessary for the protection of the revenue or the administration of any Federal law or regulation.

(c) *Decision on application.* The district director shall promptly notify the applicant in writing of the decision on

the application. If the decision is to deny the application, the district director shall specify the reaon for the denial in the reply. The decision of the district director will constitute the final Customs administrative determination concerning the application. Approval of the application will be valid until revocation by the district director. Approval of the application will not affect the right of a Customs officer periodically to review any transaction involving the covered merchandise.

(d) *Admission, handling, recordkeeping, and removal.* Upon approval of the application, the district director shall allow merchandise covered by the application to be admitted to the zone; manipulated, manufactured, exhibited, or destroyed in the zone; or removed from the zone without prior application or permit. This privilege extends to merchandise covered by the application which was in the zone in domestic status at the time the application was approved. An application and permit will be required for transactions involving merchandise of any other status with which such domestic status merchandise will be combined in the zone, and covered domestic status merchandise must be clearly identified in the application. The operator shall comply with the inventory control and recordkeeping requirements in Subpart B.

(e) *Revocation of approval.* The district director may revoke the approval of the application made under this section, if it becomes necessary for the district director to require prior application and permit for transactions involving the merchandise. The revocation will extend to merchandise which is in the zone at the time the revocation takes effect.

§ 146.15 Subzone distant from adjacent port of entry.

(a) *Examination and inspection at adjacent port.* When a subzone or subzone site more than 35 miles from the limits of the adjacent Customs port of entry is approved by the Board, the district director may order that merchandise destined for the subzone or to be removed from the subzone, and the required documentation, be presented for Customs examination and inspection at a designated location within the adjacent port of entry.

(b) *Merchandise to be admitted.* Foreign or zone-restricted status merchandise to be admitted to the subzone will be considered admitted in its quantity and condition at the time of delivery authorization to the subzone by the district director, and the operator will be responsible for any loss of merchandise occurring after the delivery authorization.

(c) *Merchandise to be removed.* Foreign or zone-restricted status merchandise being removed from the subzone will be considered to be removed in its quantity and condition at the time of delivery authorization from the subzone by the district director, and the operator will be responsible for any loss of merchandise occurring before delivery authorization.

(d) *Liquidated damages.* The subzone operator shall pay liquidated damages as required in Subpart G for any loss occurring under paragraphs (b) and (c) of this section as though the loss occurred in the subzone.

(e) *Direct delivery.* If a subzone under this section has been approved under § 146.13 for the special procedures in Subparts C and F, zone status merchandise may be admitted to, or removed from, the site as provided in those sections without respect to paragraphs (b) and (c). The documentation for that merchandise will be delivered to the district director within the limits of the adjacent port, and the district director may order the delivery of the merchandise to the adjacent port for examination.

(f) *Domestic merchandise.* Domestic merchandise for which no permit for admission is required as provided in § 146.14 need not be presented for Customs examination, and an application need not be filed with the district director. Domestic merchandise for which an application and permit is required, will be presented for examination only when ordered by the district director, but documentation for any transaction involving that merchandise must be presented to the district director within the limits of the adjacent port for review and permit as provided in this part.

§ 146.16 Place of examination outside zone.

(a) *Application.* An operator may request in writing that the district director examine or inspect merchandise destined to, or being removed from, the zone at a location outside the zone but within the limits of the port where the zone is located, with the understanding that the operator will be responsible for delivery of the merchandise between the zone and the place of examination. The district director shall not grant a request made under this section for merchandise to be transported from one port to another port, or from the jurisdiction of one port to that of another port.

(b) *Certification.* The request must be accompanied by a certification that the operator agrees to be responsible for the loss of any merchandise between the zone and the place of examination as though the merchandise were lost in the zone, and agrees to pay liquidated damages for loss as set forth in Subpart G.

(c) *Approval of application.* The district director shall approve the request if he is satisfied that the merchandise can be conveniently examined elsewhere than at the zone, the revenue is protected, and all Customs laws and regulations can be administered.

§ 146.17 Record retention.

The operator shall retain the records required in this part and defined in § 162.1a of this chapter at the zone for at least 5 years after the date of entry relating to the merchandise removed from the zone.

Subpart B—Inventory Control and Recordkeeping System

§ 146.21 General requirements.

(a) *System capability.* The operator shall maintain either a manual or automated inventory control and recordkeeping system or combination manual and automated system capable of:

(1) Accounting for all merchandise temporarily deposited, admitted, granted a zone status and/or status change, stored, exhibited, manipulated, manufactured, destroyed, and/or removed from a zone;

(2) Producing accurate and timely reports and documents as required by this part;

(3) Identifying shortages and overages of merchandise in a zone in sufficient detail to determine the quantity, description, tariff classification, zone status, and value of the missing or excess merchandise;

(4) Accounting for the physical output from a given input;

(5) Providing all the information necessary to make entry for merchandise being transferred to the Customs territory;

(6) Providing an audit trail to Customs forms from admission through manipulation, manufacture, destruction, or removal of merchandise from a zone; and

(7) Safeguarding and making available to Customs all records pertaining to the inventory control and recordkeeping system for merchandise admitted to a zone.

(b) *Procedures manual.* (1) The operator shall provide the district director with a copy in English of its written inventory control and

recordkeeping system procedures manual in accordance with requirements of this part.

(2) The operator shall keep current its inventory control and recordkeeping system procedures manual and shall submit to the district director any change at the time of its implementation.

(3) The operator may authorize a zone user to maintain its individual inventory control and recordkeeping system procedures manual. The operator shall furnish a copy of the zone user's procedures manual, including any subsequent changes, to the district director. However, the operator will remain responsible to Customs and liable under its bond for supervision, defects in, or failures of a system.

(4) The operator's procedures manual and subsequent changes will be furnished to the district director for information purposes only. Customs receipt of a manual does not indicate approval or rejection of a system.

(c) *Liability of operator.* Zone activation approval does not relieve the operator of liability for complying with all inventory control and recordkeeping system requirements set forth in this part.

§ 146.22 Admission of merchandise to a zone.

(a) *Identification.* All merchandise will be recorded in a receiving report or document using a lot control or unique identifier. All merchandise, except domestic status merchandise for which no permit for admission is required under § 146.14, will be traceable to a Customs Form 214 and accompanying documentation.

(b) *Reconciliation.* Quantities received will be reconciled to a receiving report or document such as an invoice with any discrepancy reported upon discovery to the district director as provided in § 146.37.

(c) *Incomplete documentation.* Merchandise received without complete Customs documentation or which is unacceptable to the inventory control and recordkeeping system will be recorded in a suspense account or record until documentation is complete or the system is capable of accepting the information. The receiving report or document will provide sufficient information to identify the merchandise and distinguish it from other merchandise. The suspense account or record will be completely documented for Customs review to explain the differences noted and corrections made.

(d) *Recordation.* Merchandise received will be accurately recorded in manual and/or automated inventory system records from the receiving report or document using the lot control or unique identifier for traceability. The inventory record will state the quantity and date received, cost or value where applicable, zone status, and description of the merchandise, including any part or stock number.

§ 146.23 Accountability for merchandise in a zone.

(a) *Identification of merchandise.* (1) *General.* A zone lot or other unique identifier will be used to identify and track merchandise.

(2) *Fungible merchandise.* Fungible merchandise may be identified by an inventory method authorized by the Commissioner of Customs which is consistently applied, such as First-In-First-Out (FIFO).

(b) *Inventory record.* The inventory record will specify by lot number or unique identifier:

(1) Location of merchandise;

(2) Zone status;

(3) Cost or value; unless operator's or user's financial records maintain cost or value and the records are made available for Customs review;

(4) Beginning balance, cumulative receipts and disbursements or removals, adjustments, and current balance on hand by date and quantity;

(5) Destruction of merchandise; and

(6) Scrap, waste, by-products, and joint products.

(c) *Physical Inventory*—(1) *Annual.* The Operator shall take at least an annual physical inventory of all merchandise in the zone (unless continuous cycle counts are taken as part of an ongoing inventory control program) with prior notification of the date(s) given to Customs for any supervision of the inventory deemed necessary. The operator shall notify the district director promptly of any adjustments required to reconcile the inventory record with a physical count of the merchandise taken as provided under § 146.25.

(2) *Overage.* An inventory overage of merchandise except for domestic merchandise for which no permit is required, will require zone admission, unless that merchandise is transferred to general order or an appropriate entry filed.

(3) *Shortage.* An inventory shortage except for domestic merchandise for which no permit for admission is required, will be subject to the assessment of duties and taxes plus liquidated damages under the operator's bond.

§ 146.24 Removal of merchandise from a zone.

(a) *Accountability.* (1) All zone status merchandise removed from a zone, will be accurately recorded within the inventory control and recordkeeping system. All removals, excepts for domestic merchandise for which no permit for removal is required, will be accurately documented on the appropriate Customs form traceable within the inventory control and recordkeeping system.

(2) The inventory control system for inventory relief (removal) must have the capability to trace a merchandise removal back to a zone admission, even where the merchandise is changed through manipulation, manufacture, or any other means.

(b) *Information.* The inventory control and recordkeeping system must be capable of providing all information necessary to make entry for transfer of merchandise to the Customs territory.

§ 146.25 Annual reconciliation.

(a) *Statement.* The operator shall prepare a reconciliation statement within 90 days after the end of the zone/subzone year. The operator shall retain that annual reconciliation for a spotcheck or audit by Customs, and need not furnish it to Customs unless requested. There is no form specified for the preparation of the statement.

(b) *Information required.* The statement must contain a description of merchandise for each lot or other unique identifier, zone status, quantity on hand at the beginning of the year, cumulative receipts and removals (by unit), quantity on hand at the end of the year, and cumulative positive and negative adjustments (by unit) made during the year.

(c) *Certification.* The operator shall submit to the district director within 10 working days after the annual reconciliation a letter signed by the operator certifying that the annual reconciliation has been prepared, is available for Customs review, and that it is accurate. The certification letter must contain the name and street address of the operator, where the required records are available for Customs review; and the name, title, and telephone number of the person having custody of the records. Reporting of shortages and overages based on the annual reconciliation will be made in accordance with § 146.55. Those reports must accompany the certification letter.

§ 146.26 System review.

The operator shall perform an annual internal review of the inventory control

and recordkeeping system and shall report to the district director any deficiency discovered and corrective action taken to ensure that the system meets the requirements of this part.

Subpart C—Admission of Merchandise to a Zone

§ 146.31 Merchandise permitted in a zone.

Merchandise of every description, including over-quota merchandise, may be brought into a zone unless prohibited by law. A distinction is made between prohibited articles and conditionally admissible merchandise.

(a) *Prohibited article.* District directors are required to exclude this class of article and shall not permit it to be transferred to a zone if aware of its prohibited status. If there is a question as to whether the merchandise may be prohibited, district directors may permit the temporary deposit of the merchandise in a zone pending a final determination of its status. Any prohibited article which is found within a zone will be disposed of in the manner provided for in the laws and regulations applicable to that article.

(b) *Conditionally admissible merchandise.* The admission of merchandise of this class into a zone is subject to any requirements of the Federal agency concerned.

§ 146.32 Application and permit for admission of merchandise.

(a) *Application on Customs Form 214 and permit.* Except for merchandise temporarily admitted (§ 146.33), in-transit merchandise (§ 146.34), or domestic merchandise admitted without permit (§ 146.39(a)), merchandise may be admitted into a zone only upon application on a uniquely-numbered Customs Form 214, Application for Foreign-Trade Zone Admission and/or Status Designation, and the issuance of a permit by the district director. The operator shall present the application to the district director in the number of copies that officer considers necessary, and shall include a statistical copy on Customs Form 214–A for transmittal to the Bureau of the Census, unless the operator has made arrangements for the direct transmittal of statistical information to that agency.

(b) *Supporting documents*—(1) *Commercial documentation.* The operator shall submit with the application two copies of an invoice or similar commercial document which meets the requirements of Subpart F, Part 141, of this chapter, for any merchandise to be admitted to a zone. The notation of tariff classification and value required by § 141.90 of this chapter need not be made, unless the merchandise is to be admitted in privileged status.

(2) *Evidence of right to make entry.* The operator shall submit with the application a document like that which would be required as evidence of a right to make entry for merchandise in Customs territory under §§ 141.11 or 141.12 of this chapter.

(3) *Release order.* Merchandise will not be authorized by Customs for delivery to a zone until a release has been executed by the carrier that brought the merchandise to the port, unless the merchandise is released back to that same carrier for delivery to the zone (see § 141.11 of this chapter concerning Customs responsibility). When a release order is required, it will be made on Customs Form 7529 or by the following statement on the reverse side of the Customs Form 214:

Authority is hereby given to release the merchandise described in this application to ——

Name of carrier ——

Signature and title of carrier representative ——

A blanket or qualified release order may be authorized for the transfer of merchandise to a zone as provided for in § 141.111 of this chapter.

(4) *Application to unlade.* For merchandise unladen in the zone directly from the importing carrier, the application on Customs Form 214 will be supported by an application to unlade on Customs Form 3171.

(5) *Other documentation.* The district director may require additional information or documentation as needed to conduct an examination of merchandise under Customs selective entry processing criteria, or to determine whether the merchandise is admissible to the zone.

(c) *Conditions for issuance of a permit.* Merchandise for which an application for admission to a zone is made will be admitted when:

(1) The application is properly executed and includes the zone status desired for the merchandise as provided in Subpart D of this part;

(2) The operator's approval appears either on the application or in a separate specific or blanket approval;

(3) The merchandise is retained for examination at the place of unlading, the zone, or other location designated by the district director, except for a subzone or zone site specified in § 146.13. The merchandise may be examined as if it were to be entered for consumption or warehouse; and

(4) The permit is granted by the district director, as representative of the Board, when satisfied that all requirements have been fulfilled.

(d) *Blanket application for admission of merchandise.* Merchandise may be admitted to a zone upon presentation of a Customs Form 214 covering more than one shipment of merchandise, *i.e.*, a blanket application for admission, when:

(1) The shipments arrive under one trasportation entry as described in § 141.55 of this chapter; or

(2) The shipments are destined to the same zone applicant on a single business day, and the applicant—

(i) Submits statistical trade information concerning the merchandise directly to the Bureau of the Census under an agreement with the agency, and

(ii) Presents to the district director before the merchandise is released into the zone the invoices or other documentation required by paragraph (b) of this section.

Each invoice must contain a unique identifier to relate the shipment to the manifest of the carrier that brought the merchandise to the port having jurisdiction over the zone, and the inventory control and recordkeeping system of the operator as described in Subpart B.

§ 146.33 Temporary deposit for manipulation.

Imported merchandise for which an entry has been made and which has remained in continuous Customs custody may be brought temporarily to a zone for manipulation and return to Customs territory under Customs supervision pursuant to section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), and § 19.11 of this chapter. That merchandise will not be considered within the purview of the Act but will be treated as though remaining in Customs territory. No zone form or procedure will be considered applicable, but the merchandise will remain subject in the zone to any requirements necessary for the enforcement of section 562 and other Customs laws.

§ 146.34 Merchandise transiting a zone.

The following procedure is applicable when merchandise is to be unladen from any carrier in the zone for immediate transfer to Customs territory, or if it is to be transferred from Customs territory through the zone for immediate lading on any carrier in the zone:

(a) *Application.* Application for permission to lade or unlade will be filed with the district director on

Customs Form 3171 prior to transfer of the merchandise into the zone.

(b) *Permit.* The district director shall permit the transfer unless he has reason to believe that the merchandise will not be moved promptly from the zone or made the subject of an application for zone status on Customs Form 214 in accordance with § 146.32(a).

(c) *Treatment of merchandise.* Upon the issuance of a permit to lade, or unlade, the merchandise will be treated as though the lading or unlading were in the Customs territory.

(d) *Failure to lade merchandise without delay.* Merchandise brought into a zone for lading on a carrier, but not laden without a delay which may endanger the revenue, must be made the subject of an application for zone status in accordance with § 146.32(a) or be removed from the zone.

§ 146.35 Temporary deposit in a zone; incomplete documentation.

(a) *General.* If information or documentation necessary to complete the Customs Form 214 is not available at the time of arrival of merchandise at the port, the person with the right to apply for admission will be allowed, upon application and compliance with the conditions in paragraph (c) of this section, to deposit the merchandise in the zone for a period not to exceed 5 working days unless a longer period is granted by the district director. The merchandise will be subject to examination as provided in § 146.36.

(b) *Application.* An application for temporary deposit will be made by submitting to the district director:

(1) A properly signed and uniquely-numbered Customs Form 214 in the number of copies requested by the district director; and

(2) A declaration that the information or documentation necessary to complete the Customs Form 214 is unavailable.

(c) *Conditions.* Merchandise temporarily deposited under the provisions of this section will:

(1) Be segregated from all other zone merchandise;

(2) Have no zone status and be considered to be in the Customs territory;

(3) Be held under the bond, and at the risk, of the operator; and

(4) Be manipulated only to the extend necessary to obtain sufficient information about the merchandise to file the appropriate admission or entry documentation.

(d) *Submission of completed Customs Form 214.* A complete and accurate Customs Form 214 will be submitted as provided in § 146.32 within 5 working days plus any extension granted by the district director, or the merchandise may be placed in general order.

§ 146.36 Examination of merchandise.

All merchandise covered by a Customs Form 214 will be retained for Customs examination at the place of unlading, the zone, or another location, as designated by the district director. The district director may authorize release of the merchandise without examination, as provided in § 151.2(a)(2) of this chapter. If a physical examination is conducted, the Customs officer shall note the results of the examination on the invoices.

§ 146.37 Operator responsibility.

(a) *Maintenance of admission documentation—(1) Lot file.* The operator shall open and maintain a lot file containing a copy of the Customs Form 214 and the examination invoice received from Customs, and all other documentation necessary to account for the merchandise covered by each Customs Form 214. The lot file will be maintained in sequential order by using the unique number assigned to each Customs Form 214 as the file reference number. In zones where a Customs-authorized inventory method other than specific identification of merchandise is used, *e.g.*, First-In-First-Out (FIFO), no lot file is required but the operator shall maintain a file of all Customs Form 214 in sequential order.

(2) *Examination invoice.* The operator shall give a copy of the examination invoice to the person making entry to remove the merchandise from the zone, upon request of that person or the district director.

(b) *Liability for merchandise.* The operator will be held liable under its bond for the receipt of merchandise in the quantity and condition as described on the Customs Form 214, except as modified by a discrepancy report:

(1) Signed jointly by the operator and carried on the Customs Form 214 or other approved form within 15 days after admission of the merchandise, and reported to the district director within 2 working days thereafter; or

(2) Submitted on Customs Form 5931 under the provisions of Subpart A, Part 158, of this chapter within 20 days after admission of the merchandise. The operator may file a Customs Form 5931 on behalf of the person who applied for admission of merchandise to the zone.

(c) *Supervision of merchandise.* The district director may authorize the receipt of zone status merchandise at a zone without physical supervision by a Customs officer (see § 146.8). In that case, the operator shall supervise the receipt of merchandise into the zone, report the receipt and condition of the merchandise, and mark packages with the unique Customs Form 214 number so that the merchandise can be traced to a particular Customs Form 214. Packages that are accounted for under a Customs-authorized inventory method other than specific identification, need not be marked with a unique Customs Form 214 number but must be adequately identified so Customs can conduct an inventory count. The operator shall submit the Customs Form 214 to Customs at the location specified by the district director.

§ 146.38 Certificate of arrival of merchandise.

Whenever a certificate prepared by Customs as to the arrival of any merchandise in a zone is required by a Federal agency, the district director shall issue the document certifying only that authorization to deliver the merchandise to a zone has been made. The operator shall issue a certificate of arrival of merchandise at a zone.

§ 146.39 Domestic merchandise.

(a) *Special procedure approved.* After approval by the district director of an application submitted under § 146.14 for domestic status mechandise, no other application for admission of the merchandise will be accepted by Customs.

(b) *Other domestic merchandise.* Domestic status merchandise not covered by an approved application under § 146.14 will require an application for admission on Customs Form 214 (without supporting documentation) as provided in § 146.32(a).

§ 146.40 Subzone and noncontiguous zone site.

(a) *Direct delivery*—(1) *Authorization.* The district director may allow direct delivery of merchandise to a subzone or zone site approved under § 146.13 without prior application and approval on Customs Form 214 or Customs examination of the merchandis.

(2) *Right to examine.* The district director retains the authority, notwithstanding paragraph (a)(1) of this section, to conduct a physical examination of merchandise before or upon its admission to a subzone or zone site. The district director may order such an examination whenever it is deemed necessary to protect the revenue or administer any Federal law or regulation.

(b) *Arrival of conveyance.* Upon arrival at a subzone or zone site of a conveyance containing foreign merchandise, the operator shall:

(1) Collect in-bond or cartage documentation from the carrier, and notify the district director before unloading the conveyance if the shipment should have been in bond but is not;

(2) Check the condition of any seal affixed to the conveyance, and if broken, missing or improperly affixed, notify the district director and receive instructions before unloading the merchandise;

(3) Check each incoming in-bond and cartage shipment to determine if the manifested quantity or the quantity on the cartage document agrees with the quantity actually received;

(4) Sign and date the in-bond or cartage documentation; and

(5) Forward the in-bond or cartage documentation so as to reach the district director within 2 working days after the date of arrival of the conveyance at the subzone or zone site.

(c) *Admission of merchandise; alternative procedures*—(1) *Cumulative Customs Form 214.* The operatorf shall submit to the district director each business day a properly signed and uniquely-numbered Customs Form 214 listing all merchandise, except for domestic status merchandise admitted under § 146.14, recorded into the inventory control and recordkeeping system during the previous business day. The Customs Form 214 must contain a list of all in-bond (I.T.) numbers or the unique number of any cartage document, as well as the number of invoices for each I.T. or cartage document, pertaining to merchandise which has been entered into the system.

(2) *Individual Customs Form 214.* If a cumulative Customs Form 214 is not submitted as provided in paragraph (c)(1) of this section, the operator shall file with the district director each business day an individual Customs Form 214 covering each shipment recorded into the inventory control and recordkeeping system during the previous business day.

(3) *General order.* Merchandise which is not admitted into a subzone or zone site as provided in this section within 5 working days after its arrival there may be sent to general order unless:

(i) The district director grants the operator's request for an extension of the 5-working day period; or

(ii) The importer of record files an appropriate Customs entry for the merchandise and removes it from the zone premises.

(d) *Operator responsibility for merchandise*—(1) *Manifested quantities.* The manifested quantity or the quantity stated on the cartage document will be considered the quantity admitted to the subzone or zone site unless:

(i) The in-bond or cartage documentation is amended by the operator and carrier in joint agreement noting any discrepancy, prior to forwarding that documentation to the district director; or

(ii) The operator independently submits to the district director a discrepancy report on Customs Form 5931, and that official finds the operator not liable for any discrepancy.

(2) *In-bond manifest file.* The operator shall maintain a file of open in-bond manifests in chronological order of date of conveyance arrival to identify shipments that have arrived but the entire contents of which have not been admitted to the subzone or zone site as provided in this section. The operator shall notify the district director, by annotation on the Customs Form 214, when the entire contents of a shipment have been admitted.

(3) *Inventory control and recordkeeping system.* The operator shall establish and maintain a continuing input quality control program to ensure that information concerning merchandise in admission documents, verified or corrected by counts and checks, is accurately recorded in the inventory control and recordkeeping system. Quantities recorded in the system, after allowance by the district director for any discrepancies, will be the quantities of merchandise for which the operator shall be held liable under its bond for admission to the subzone or zone site. A discrepancy involving a within-case shortage (or overage) need not be reported on Customs Form 5931, if the operator is able to report that information in another manner so the district director can determine whether there is liability for the discrepancy under the bond of any party to the importation.

Subpart D—Status of Merchandise in a Zone

§ 146.41 Privileged foreign merchandise.

(a) *General.* Foreign merchandise which has not been manipulated or manufactured so as to effect a change in tariff classification will be given status as privileged foreign merchandise on proper application to the district director.

(b) *Application.* Each application for this status will be made on Customs Form 214 at the time of filing the application for admission of the merchandise into a zone or at any time thereafter before the merchandise has been manipulated or manufactured in the zone in a manner which has effected a change in tariff classification.

(c) *Supporting documentation.* Each applicant for this status shall submit to the district director with the application an invoice noted as provided for in § 141.90 of this chapter.

(d) *Determination of duties and taxes.* Upon receipt of the application and accompanying invoice, the district director may examine the merchandise to determine whether to approve the application. The merchandise will be subject to appraisement as provided in § 146.65, and tariff classification according to its condition and quantity, at the rate of duty and tax in force, on the date the application is filed in complete and proper form.

(e) *Merchandise subject to tariff-rate quota.* Classification of merchandise subject to a tariff-rate import quota will be made only at the higher non-quota duty rate in effect on the date privileged foreign status was granted. If entry is made under Subpart F, the entry will be liquidated at the higher non-quota duty rate.

(f) *Status as privileged foreign merchandise binding.* A status as privileged foreign merchandise cannot be abandoned and remains applicable to the merchandise even if changed in form by manipulation or manufacture, except in the case of recoverable waste (see § 146.65(c)(2)), as long as the merchandise remains within the purview of the Act. However, privileged foreign merchandise may be exported or withdrawn for supplies, equipment, or repair material of vessels or aircraft without the payment of taxes and duties, in accordance with §§ 146.68 and 146.70.

§ 146.42 Nonprivileged foreign merchandise.

All of the following will have the status of nonprivileged foreign merchandise:

(a) *Foreign merchandise.* Foreign merchandise properly in a zone which does not have the status of privileged foreign merchandise or of zone-restricted merchandise;

(b) *Waste.* Waste recovered from any manipulation or manufacture of privileged foreign merchandise in a zone; and

(c) *Certain domestic merchandise.* Domestic merchandise in a zone which by reason of noncompliance with the regulations in this part has lost its identity as domestic merchandise will be treated as foreign merchandise. Any domestic merchandise will be considered to have lost its identity if the district director determines that it

cannot be identified positively by a Customs officer as domestic merchandise on the basis of an examination of the articles or consideration of any proof that may be submitted promptly by a party in interest.

§ 146.43 Domestic merchandise.

(a) *General.* Domestic status may be granted to merchandise:

(1) The growth, product, or manufacture of the United States on which all internal-revenue taxes, if applicable, have been paid;

(2) Previously imported and on which duty and tax has been paid; or

(3) Previously entered free of duty and tax.

(b) *Application.* Application for domestic status shall be included in the application on Customs Form 214 to admit the merchandise into the zone, but the documents in support of the application described in § 146.32(b) are not required. Domestic merchandise admitted without application and permit under § 146.14 will be granted domestic status.

(c) *Domestic packing and repair materials.* If the district director is satisfied that the revenue will be protected, and the rights of importers will not be prejudiced, that official may permit the transfer to a zone of domestic packing and repair materials and related articles without requiring an application on Customs Form 214.

(d) *Return of merchandise to Customs territory.* Upon compliance with the provisions of this section and § 146.72, any of the merchandise specified in paragraph (a) of this section, may subsequently be returned to Customs territory free of quotas, duty, or tax.

§ 146.44 Zone-restricted merchandise.

(a) *General.* Merchandise taken into a zone for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage will be given zone-restricted status on proper application. That status may be requested at any time the merchandise is located in a zone, but cannot be abandoned once granted. Merchandise in zone-restricted status may not be removed to Customs territory for domestic consumption except where the Board determines the return to be in the public interest.

(b *Application.* Application for zone-restricted status will be made on Customs Form 214.

(c) *Merchandise considered exported*—(1) *For Customs purposes.* If the applicant desires a zone-restricted status in order that the merchandise may be considered exported for the purpose of any Customs law, all pertinent Customs requirements relating to an actual exportation shall be complied with as though the admission of the merchandise into the zone constituted a lading on an exporting carrier at a port of final exit from the United States. Any declaration or form required for actual exportation will be modified to show that the merchandise has been deposited in a zone in lieu of actual exportation, and a copy of the approved Customs Form 214 may be accepted in lieu of any proof of shipment required in cases of actual exportation.

(2) *For other purposes.* If the merchandise is to be considered exported for the purpose of any Federal law other than the Customs laws, the district director shall be satisfied that all pertinent laws, regulations, and rules administered by the Federal agency concerned have been complied with before the Customs Form 214 is approved.

(d) *Merchandise entered for warehousing transferred to a zone.* Merchandise entered for warehousing and transferred to a zone, other than temporarily for manipulation and return to Customs territory as provided for in § 146.33, will have the status of zone-restricted merchandise when admitted into the zone. The application on Customs Form 214 will state that zone-restricted status is desired for the merchandise.

Subpart E—Handling of Merchandise in a Zone

§ 146.51 Customs control of merchandise.

No merchandise, other than domestic merchandise approved under § 146.14, will be manipulated, manufactured, exhibited, destroyed, or removed from a zone in any manner or for any purpose, except under Customs permit as provided for in this part. The district director may require segregation of any zone merchandise when that official considers it necessary for the protection of the revenue.

§ 146.52 Manipulation, manufacture, or exhibition.

(a) *Application*—(1) *Filing.* The operator shall file with the district director an application on Customs Form 216 for permission to manipulate, manufacture, or exhibit merchandise in a zone. None of those operations may be conducted until the district director has approved the application.

(2) *Blanket application.* The district director is authorized to approve a blanket application for a period up to one year for a continuous or repetitive operation. The district director may disapprove or revoke approval of a blanket application and may require the operator to file an individual application when necessary to protect the revenue or administer any law or regulation.

(b) *Approval of application*—(1) *General.* The district director shall approve the application unless the proposed operation would be in violation of law or regulation; the place designated for its performance is not suitable for preventing confusion of the identity or status of the merchandise or for safeguarding the revenue; or the Executive Secretary of the Board has not granted approval of a new manufacturing operation.

(2) *Privileged foreign merchandise.* An application made under this section for permission to manipulate or manufacture privileged foreign merchandise will not be approved until the district director is satisfied that the examination provided for the § 146.41(d) has been completed.

(3) *Lot system merchandise.* When an operator maintains a zone inventory under a lot system, merchandise from different lots will not be mixed without approval by the district director on Customs Form 216.

(c) *Appeal of adverse ruling.* If the application is denied by the district director for any reason, the applicant or the grantee may appeal the adverse ruling to the Board. If any revenue protection considerations are involved in the application, the Board shall be guided by the determinations of the Secretary of the Treasury with respect to them.

(d) *Report*—(1) *Separate application.* The operator shall report on Customs Form 216 the results of an approved manipulation or manufacture of merchandise (other than that covered by a blanket application made under paragraph (a)(2) of this section, unless the district director chooses physically to supervise the operation. The operator shall retain the completed Customs Form 216 in its inventory control and recordkeeping system.

(2) *Blanket application.* The operator shall maintain an approved blanket application to manipulate or manufacture in its inventory control and recordkeeping system. In lieu of the report on Customs Form 216 required in paragraph (d)(1) of this section, the operator shall maintain a record of the operation in its inventory control and recordkeeping system so as to provide an accounting and audit trail of the merchandise through the approved operation.

§ 146.53 Destruction.

(a) *Application.* Each application to destroy merchandise in a zone will be filed with the district director on Customs Form 216. A blanket application may be approved or revoked under the same circumstances as provided for in § 146.52.

(b) *Approval of application and procedure.* (1) The district director shall approve the application if satisfied that the destruction will be effective and complete, and the revenue will be protected. The district director may permit the destruction to be done outside the zone, in whole or in part and at the risk and expense of the applicant, and under such conditions necessary to protect the revenue, if proper destruction cannot be accomplished within the zone. Any residue of destruction which is entirely worthless may be removed to Customs territory for disposal.

(2) Distilled spirits, wines, and fermented malt liquors may not be brought into a zone for the purpose of destruction, as provided for in § 146.44(a). If those products have been admitted to a zone for another purpose and subsequently become unmerchantable, they may be destroyed under Customs supervision, with the approval of the appropriate official of the Bureau of Alcohol, Tobacco, and Firearms under the provisions of Title 27, Code of Federal Regulations.

(c) *Report of destruction.* The operator shall certify the destruction on Customs Form 216, and maintain the report in its inventory control and recordkeeping system.

§ 146.54 Safekeeping of merchandise and records.

The operator is responsible for the safekeeping of merchandise and records concerning merchandise admitted to a zone. The operator, at its liability, may allow the zone importer or owner of the goods to store, safeguard, and otherwise maintain or handle the goods and the inventory records pertaining to them.

(a) *Records maintenance.* The operator shall maintain the inventory control and recordkeeping system in accordance with the provisions of Subpart B, retain all records pertaining to zone merchandise for 5 years after the merchandise is removed from the zone, and protect proprietary information in its custody from unauthorized disclosure.

(b) *Merchandise security.* The operator shall maintain the zone and establish procedures adequate to ensure the security of merchandise located in the zone in accordance with applicable Customs security standards and specifications.

(c) *Storage and handling.* The operator shall store and handle merchandise in a zone in a safe and sanitary manner to minimize damage to the merchandise, avoid hazard to persons, and meet local, state, and Federal requirements applicable to a specific kind of goods. All trash and waste will be promptly removed from a zone. Aisles will be established and maintained, and doors and entrances left unblocked for access by Customs officers and other persons in the performance of their official duties.

§ 146.55 Shortage, overage, and damage.

(a) *Report required.* The operator shall report in writing to the district director upon discovery of:

(1) Theft or suspected theft of merchandise;

(2) Excess merchandise not properly admitted to the zone;

(3) Shortage of one percent (1%) or more of the quantity of merchandise in a lot or covered by a unique identifier, if the missing merchandise would have been subject to duties and taxes of $100 or more upon entry into the Customs territory; or

(4) Damage amounting to one percent (1%) or more of the value of merchandise in a lot or covered by a unique identifier, if the damage is $1,000 or more.

The operator shall record upon discovery *all* shortages, overages, and damage, whether or not required to be reported at that time to the district director, in its inventory control and recordkeeping system. The operator shall report shortages, overages, and damage to Customs as required in the annual reconciliation statement under § 146.25.

(b) *Certain domestic merchandise.* Except in a case of theft or suspected theft; the operator need not file a report with the district director or note in the annual reconciliation statement, any shortage, overage, or damage concerning domestic status merchandise for which no permit for admission is required.

(c) *Shortage*—(1) *Operator responsibility.* The operator is responsible under its Foreign-Trade Zone Operator's Bond for any loss of merchandise or for any merchandise which cannot be located or otherwise accounted for (except domestic status merchandise for which no permit for admission was required), unless the district director is satisfied that the merchandise was:

(i) Never received in the zone;

(ii) Removed from the zone under proper permit;

(iii) Not removed from the zone; or

(iv) Lost or destroyed in the zone through fire or other casualty, evaporation, spillage, leakage, absorption, or similar cause, and did not enter the commerce of the United States.

(2) *Liability for duty and taxes.* Upon demand of the district director, the person with the right to make entry shall make entry for and pay duties and taxes applicable to merchandise which is missing or otherwise not accounted for. An entry for the payment of duties and taxes on that merchandise will not relieve the operator of liability under its bond, but the district director shall consider those acts in determining whether to assess liquidated damages, or to cancel a liquidated damage assessment upon payment of a lesser amount.

(d) *Overage.* The person with the right to make entry shall file, within 5 days after discovery of an overage, an application for admission of the merchandise to the zone on Customs Form 214 or file a Customs entry for the merchandise. If a Customs Form 214 or a Customs entry is not timely filed, and the district director has not granted an extension of the time provided, the merchandise may be sent to general order.

(e) *Damage.* The liability of the operator under its Foreign-Trade Zone Operator's Bond may be adjusted for the loss of value resulting from damage to merchandise occurring in the zone. The operator shall segregate, mark, and otherwise secure damaged merchandise to preserve its identity. The operator shall handle merchandise so as to minimize damage or deterioration, as provided for in § 146.54.

Subpart F—Removal of Merchandise From a Zone

§ 146.61 Constructive transfer to Customs territory.

The district director shall accept receipt of any entry in proper form provided under this subpart, and the merchandise described therein will be considered to have been constructively transferred to Customs territory at that time, even though the merchandise remains physically in the zone. If the entry is thereafter rejected or cancelled, the merchandise will be considered at that time to be constructively transferred back into the zone in its previous zone status.

§ 146.62 Right to make entry.

Entry of merchandise under this subpart may be made only by the owner or purchaser or, when appropriately

designated by the owner, purchaser, or consigneee, by a licensed customhouse broker.

§ 146.63 Entry for consumption.

(a) *General.* The provisions of this section are applicable to the following merchandise:

(1) Privileged foreign merchandise that has not been mixed, combined, or repacked in a zone;

(2) Products of manipulation or manufacture in a zone composed of, or derived from, privileged foreign and domestic merchandise;

(3) Articles composed entirely of, or derived entirely from, nonprivileged foreign and domestic merchandise;

(4) Articles composed in part of, or derived in part from, nonprivileged foreign and domestic merchandise; and

(5) Recoverable waste resulting from the manipulation or manufacture of foreign merchandise.

(b) *Entry documentation*—(1) *General.* When merchandise is removed from a zone for consumption, entry will be made on Customs Form 3461, Customs Form 7501, or other applicable Customs form and will be accompanied by the entry documentation, including invoices, as provided in Parts 141 and 142 of this chapter. The importer of record shall submit any other supporting documents required by law or regulation that relate to the transaction removing the merchandise from the zone, and provide the information necessary to support the admissibility, the declared zone and dutiable value, quantity, and classification of the merchandise. If the declared zone and dutiable value are predicated on estimates or estimated costs furnished either in advance or at the time of entry, that information must be clearly stated in writing at the time an entry or entry summary is filed.

(2) *Subzone or noncontiguous zone site.* The district director may allow the importer of merchandise from a subzone or noncontiguous zone site approved under § 146.13 to file an entry on Customs Form 3461 for the estimated removal of merchandise during the calendar week. The Customs Form 3461 filed with the district director must be accompanied by a *pro forma* invoice or schedule showing the number of units of each type of merchandise to be removed during the week and the zone and dutiable value of each unit to be removed. Merchandise covered by an entry made under the provisions of this section will be considered to be entered, and may be removed, only when the district director has accepted the entry on Customs Form 3461. If actual removals will exceed the estimate for the week, the importer of record shall file a supplemental Customs Form 3461 to cover the additional units before their removal from the subzone or zone site. The procedure described in this subparagraph will not be allowed if the importer of record is required to file an entry summary at the time of entry as provided for in § 142.13 of this chapter.

(c) *Entry summary.*—(1) *Individual.* When entry is made on Customs Form 3461, the importer shall file an entry summary for the merchandise within 10 working days after the time of entry. The entry summary must be accompanied by any duties and taxes estimated to be due on the merchandise, and a statement of the quantity, zone status, zone value, and dutiable value of the merchandise covered by the entry summary.

(2) *Weekly.* The importer of record in a subzone or noncontiguous zone site approved under § 146.13 shall file an entry summary for the merchandise described on the weekly entry and any supplemental entries, within 10 working days after presentation of the initial Customs Form 3461 for the calendar week. The entry summary must be accompanied by any duties and taxes estimated to be due on the merchandise, and a statement of the quantity, zone status, zone value, and dutiable value of the merchandise actually removed during the covered week, reconciled to the entry summary. Notwithstanding that a weekly entry may be allowed under paragraph (b) of this section, all merchandise will be dutiable in its actual condition at the time of its removal from the zone or zone site for consumption. When estimated removals exceed actual removals, that excess merchandise will not be considered to have been entered or constructively transferred to the Customs territory. Merchandise covered by a weekly entry and entry summary will be removed promptly from the zone or zone site, unless retained as domestic status merchandise as provided for in § 146.73(d).

(d) *Waiver of supporting documents.* The district director may waive presentation of an invoice and supporting documentation (except the statement required in paragraph (c) of this section) with the entry or entry summary, if satisfied that presentation of those documents would be impractical, and the importer of record or operator either files invoices and supporting documentation with the district director or maintains and makes those records available for examination by Customs.

(e) *Removal for transportation to another port for consumption*—(1) *Application for transfer.* When merchandise is to be transferred to Customs territory for transportation to another port for entry for consumption, an entry for transportation will be made on Customs Form 7512, bearing the notations in §§ 146.66, and 146.71 when applicable, as an application for the transfer.

(2) *Condition for acceptance of entry for transportation.* The district director shall not accept an entry for transportation for products of manipulation or manufacture of privileged foreign merchandise until satisified that the merchandise exists in the zone in its final form as described in the entry and that all other documents required to be submitted with the entry have been received.

(3) *Release of merchandise for transportation.* Upon acceptance of the entry, the district director shall release the merchandise to the operator for delivery to the bonded carrier.

(4) *Entry for consumption at port of destination.* An entry for consumption will be made at the port of destination on Customs Form 7501 or other approved Customs form by the person who has the right to make entry.

§ 146.64 Entry for warehouse.

(a) *Foreign merchandise.* Merchandise in privileged foreign status or composed in part of merchandise in privileged foreign status may not be entered for warehouse from a zone. Merchandise in nonprivileged foreign status containing no components in privileged foreign status may be entered for warehouse in the same or at a different port.

(b) *Zone-restriced merchandise.* Foreign merchandise in zone-restricted status may be entered for warehouse in the same or at a different port only for storage pending exportation, unless the Board has approved another disposition.

(c) *Time Limitation.* An entry for warehouse must be made within the time limit provided for in section 557(a), Tariff Act of 1930 (19 U.S.C. 1557(a)).

§ 146.65 Examination, classification, valuation, and liquidation.

(a) *Examination.* Customs may examine any merchandise on its removal from a zone. All requirements and restrictions applicable to imported merchandise entered for consumption or warehouse, *e.g.*, labelling, radiation standards, trademarks, quotas, visas, *etc.*, also may apply to merchandise constructively transferred to the Customs territory from a zone.

(b) *Tariff classification*—(1) *Privileged foreign merchandise.* Privileged foreign merchandise provided for in this section will be subject to tariff

classification according to its condition and quantity, at the rate of duty and tax in force on the date of filing, in complete and proper form, the application for privileged status.

(2) *Nonprivileged foreign merchandise.* Nonprivileged foreign merchandise provided for in this section will be subject to tariff classification in accordance with its character and condition at the time the entry or entry summary is filed with Customs

(c) *Valuation*—(1) *Total zone value.* The total zone value of merchandise provided for in this section will be determined in accordance with the principles of valuation contained in sections 402 and 500 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a, 1500). Generally, the total zone value would be that price paid or a payable to the zone seller in the transaction that caused the merchandise to be removed from the zone. Where there is no price paid or payable, the total zone value would be the cost of all materials and zone processing costs related to the merchandise removed from the zone.

(2) *Dutiable value.* The dutiable value of merchandise provided for in this section will reflect the cost or value of components having a foreign status, exclusive of any cost of processing or fabrication incurred in the zone, general expenses and profit, international freight and insurance costs, the United States inland freight costs. Generally, the dutiable value would be, or represent, the price paid or payable by the zone operator in the transaction that caused the merchandise or component to be admitted into a zone. Where there is no price paid or payable, or reasonable representation of that cost, the dutiable value may be determined by excluding from the total zone value any cost of processing or fabrication, general expenses and profit, international freight and insurance costs, the United States inland freight costs. The dutiable vaue of recoverable waste or scrap from a zone operation will be the price paid or payable to the zone seller in the transaction that caused the recoverable waste or scrap to be removed from the zone. An allowance in the dutiable value of zone merchandise may be made by the district director in accordance with the provisions of Subparts B and C of Part 158 of this chapter, relating to damaged or defective merchandise and casualty while merchandise is in Customs custody.

(d) *Liquidation*—(1) *General.* The entry provided for in this section will be liquidated in accordance with the provisions of Part 159 of this chapter.

(2) *Extension to update cost data.* When the declared value of the merchandise is based on an estimate, the importer of record may request an extension of liquidation pending the presentation of updated or actual cost data. A request for an extension may be granted at the discretion of the district director. If the extension is granted, the importer of record shall submit the updated or actual cost data to the district director, within 90 days after the close of the accounting year.

§ 146.66 Entry for tranportation to another port.

The person making entry for merchandise to be transported to another port in accordance with any provision of this subpart shall note all copies of the entry to state that the merchandise covered by the entry is foreign-trade zone merchandise; the number of the zone from which the merchandise was removed; and the zone status of the merchandise.

§ 146.67 Transfer from one zone to another.

(3) *Domestic merchandise.* The transfer of domestic merchandise from one zone to another is not subject to Customs control, except that the removal of the merchandise from the first zone and its admission into the zone of destination will be in accordance with §§ 146.39, 146.43, 146.72, and 146.73.

(b) *Other merchandise*—(1) *At the same port.* A transfer of merchandise to another zone with a different operator at the same port (including a consolidated port) will be by a licensed cartman under an entry for immediate transportation on customs Form 7512 or other appropriate form with a Customs Form 214 filed at the destination zone. A transfer of merchandise between zone sites at the same port (including a consolidated port) having the same operator may be made under a local control system approved by the district director wherein any loss of merchandise between sites will be treated as if the loss occurred in the zone.

(2) *At a different port.* A transfer of merchandise from a zone at one port of entry to a zone at another port will be by bonded carrier under an entry for immediate transportation on Customs Form 7512. All copies of the entry must bear a notation in addition to those required in § 146.66 that the merchandise is being transferred to another zone designated by its number. A transfer of merchandise from the first zone into Customs territory and its admission into the zone of destination will be in accordance with § 146.32 and 146.66, respectively.

(c) *Forwarding of merchandise history; documentation.* When merchandise is transferred under the provisions of this section, the operator of the removal zone shall provide the operator of the destination zone with the documented history of the merchandise being transferred.

(1) The following documentation must accompany merchandise maintained under a lot inventory control system:

(i) A copy of the original Customs Form(s) 214 with accompanying invoices for admission of the merchandise and all components thereof;

(ii) A copy of any Customs Form 214 filed subsequent to admission to change the status of the merchandise or its components; and

(iii) A copy of any Customs Form 216 to manipulate or manufacture the merchandise.

(2) The following documentation must accompany merchandise not under a lot system, and not manufactured in a zone:

(i) A copy of the original Customs Form(s) 214 with accompanying invoices for admission of the merchandise as attributed under the particular zone inventory method;

(ii) A copy of any Customs Form 214 filed subsequent to admission to change the status of the merchandise as attributed under the particular zone inventory method; and

(iii) A copy of any Customs Form 216 to manipulate the merchandise as attributed under the particular zone inventory method.

(3) If the documents specified in paragraph (c)(2) of this section, are not presented, the operator of the removal zone shall submit the following:

(i) A statement of the zone value, dutiable value, quantity, description, unique identifier, and zone status (showing any changes of status after admission and whether the merchandise was manipulated so as to change its tariff classification) of all the merchandise in the shipment covered by the transportation entry; and

(ii) A certification that the statement in paragraph (c)(3)(i) of this section, is true and that the information contained therein is contained in the inventory control and recordkeeping system of the removal zone.

(4) The following documentation must accompany merchandise not under a lot system, but manufactured in a zone:

(i) A statement by the removal zone operator of the zone value, dutiable value, quantity, description, unique identifier, and zone status of all the merchandise (and components thereof,

where applicable) covered by the transportation entry with a certification by the operator that the information is true and is reflected in the inventory control and recordkeeping system of the removal zone. The statment will also show any change in zone status in the removal zone, and whether the merchandise has been manufactured or manipulated in the zone so as to change its tariff classification; and

(ii) A certification by the operator of the removal zone that the statement in paragraph (c)(4)(i) of this section, is true and the information therein is contained in the inventory control and recordkeeping system of the zone.

(5) The operator of the removal zone shall transmit the historical documentation of the merchandise within 2 working days after it has been delivered to the bonded carrier for transportation. The documentation will be referenced to the I.T. number covering the merchandise.

(d) *Arrival at destination zone.* Upon arrival of the merchandise at the destination zone, it will be admitted under the procedure provided for in § 146.32, except that no invoice or Customs examination will be required. When the historical documentation is received, the operator of the destination zone shall associate it with the Customs Form 214 for admission of the merchandise, and incorporate that information into the zone inventory control and recordkeeping system.

§ 146.68 Removal for exportation.

(a) *Direct exportation.* Any merchandise in a zone may be exported directly therefrom (without transfer into Customs territory) upon compliance with the procedures of this section, except as provided in § 146.72.

(1) *Application.* The operator shall sign and submit to the district director, in triplicate, an application for direct exportation which must include:

(i) The proposed date of exportation;

(ii) The identification of the carrier;

(iii) The destination of the shipment; and

(iv) Identification of the merchandise by zone storage location, lot number or unique identifier, marks and numbers of packages, description, quantity, and zone status. If a form of tally, prepared and signed by the operator for its own purposes contains the required information, it may be accepted by the district director in lieu of the application provided for in this paragraph.

(2) *Permit of exportation.* If the district director approves the application, the original will be stamped to serve as a permit of exportation. The original and one copy will be returned to the operator. No document other than the permit of exportation will be required to release the merchandise to the operator for lading aboard the exporting carrier.

(b) *Immediate exportation.* Each transfer of merchandise other than domestic status merchandise, to the Customs territory for exportation at the port where the zone is located, will be made under an entry for immediate exportation on Customs Form 7512. The entry must describe the merchandise as foreign-trade zone merchandise, specify the zone status, and bear any special notation required in §§ 146.66 and 146.71. The person filing the export entry shall obtain an export bond on Customs Form 301 containing the bond conditions provided for in §113.62 of this chapter.

(c) *Transportation and exportation.* Each transfer of merchandise other than domestic, to the Customs territory for transportation to and exportation from a different port, will be made under an entry for transportation and exportation on Customs Form 7512, and must bear the notations as required in §§ 146.66 and 146.71. No exportation bond will be required of the person who files the transportation and exportation entry. The bonded carrier will be responsible for exportation of the merchandise in accordance with law and regulation.

(d) *Export declaration.* Every exporter of merchandise of any zone status shall submit a Shipper's Export Declaration as required by the regulations of the Bureau of the Census, Department of Commerce (see 15 CFR Part 30).

(e) *Merchandise produced or manufactured in a zone returned to Customs territory after exportation.* Merchandise produced or manufactured in a zone and exported without having been transferred to Customs territory other than for exportation or for transportation and exportation will be subject, on its return to Customs territory, to the duties and taxes applicable to like articles of wholly foreign origin, unless it is conclusively established that it was produced or manufactured exclusively with the use of domestic merchandise. The identity of the domestic merchandise must have been maintained in accordance with the provisions of this part, in which case that merchandise will be subject to the provisions of Schedule 8, Part 1, Tariff Schedules of the United States (19 U.S.C. 1202).

§ 146.69 Removal for transportation or exportation; subzone or noncontiguous zone site.

(a) *Weekly permit.* The district director may allow a person with the right to make entry at a subzone or noncontiguous zone site, with an application for special procedures approved under § 146.13, to file an application for a weekly permit to enter and release merchandise during a calendar week for exportation, transportation, or transportation and exportation. The application will be on Customs Form 7512 stating at the top the words "Application for Weekly Zone Permit," and will be filed with the district director. The application must be accompanied by a *pro forma* invoice or schedule like that required in § 146.63(b)(2). If actual removals will exceed the estimate for the week, the person with the right to make entry shall file a supplemental Customs Form 7512 to cover the additional merchandise to be removed from the subzone or zone site. No merchandise covered by the weekly permit may be removed before approval of the application by the district director.

(b) *Individual entires.* After approval of the application for a weekly permit by the district director, the person with the right to make entry will be authorized to execute individual Customs Forms 7512 for exportation, transportation, or transportation and exportation of the merchandise covered by permit. Upon removal of the merchandise, the operator shall obtain a receipt from the carrier to assure its assumption of liability under the carrier's or cartman's bond. Customs will consider the time of entry to be when the removing carrier signs the receipt for the merchandise. The operator shall give the bonded carrier a copy of the individual Customs Form 7512 and the destination copy (Customs Form 7512–C), as provided for in § 18.2(c) of this chapter. The operator also shall ensure that the district director receives a copy of the Customs Form 7512 and the origin copy (Customs Form 7512–C) by the end of the next working day after the carrier has receipted for the merchandise.

(c) *Statement of merchandise entered.* The person with right to enter merchandise under an approved weekly permit shall file with the district director, by the close of business on the second working day of the week following the week designated on the permit, a statement of the merchandise entered under that permit. The statement must list each Customs Form 7512 by its unique I.T. number, and will provide a reconciliation of the quantities on the weekly permit with the manifested quantities on the individual customs Forms 7512 submitted to Customs, as well as an explanation of any discrepancy.

§ 146.70 Supplies, equipment, and repair material for vessels or aircraft.

(a) *Applicability.* Any merchandise which may be withdrawn duty and tax-free in Customs territory under section 309 or 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), and §§10.59 through 10.65 of this chapter may similarily be withdrawn from a zone, regardless of its zone status, under those statutes and regulations. Domestic merchandise is not subject to the provisions of this section and may be withdrawn from a zone in accordance with the provisions of § 146.72.

(b) *Merchandise for delivery within zone.* The withdrawal of merchandise provided for in paragraph (a) of this section, for delivery within the zone where withdrawn to a qualified vessel or aircraft, or as ground equipment of a qualified aircraft, will be on Customs Form 7512 (see § 10.60 of this chapter).

(1) *Who may make entry to withdraw.* The entry to withdraw merchandise under this section will be made by the person specified in § 146.62, except when the withdrawal is made under the provisions of § 10.60.(b) and (c) of this chapter.

(2) *Supporting documents.* The entry must be supported by an application for lading in the same form as the application in § 146.68(a)(1), and a bond on Customs Form 301 containing the bond conditions provided for in § 113.64 of the chapter.

(3) *Release of articles.* Upon acceptance of the application and bond, the district director shall release the merchandise to the operator for delivery to the qualified vessel or aircraft for lading in the zone.

(c) *Merchandise for delivery outside zone.* The withdrawal of merchandise provided for in paragraph (a) of this section, for delivery at a place outside the zone in the same or at a different port to a qualified vessel or aircraft, or as ground equipment of a qualified aircraft, will be on Customs Form 7512 (See § 10.60 of this chapter). The withdrawal must contain the notations required in §§ 146.66 and 146.71.

(1) The person making the withdrawal and the procedure to be followed are described in paragraph (b), except that no application for lading need accompany the Customs Form 7512.

(2) Upon acceptance of the withdrawal, the district director shall release the merchandise to the operator for delivery to the bonded cartman, lighterman, or carrier, for transportation through the Customs territory to the qualified lading vessel or aircraft.

§ 146.71 Transfer of zone-restricted merchandise into Customs territory.

(a) *Type of entry.* Zone-restricted merchandise may be removed to Customs territory only for entry for exportation, for entry for transportation and exportation, for warehousing pending exportation, for destruction, (except destruction of distilled spirits, wines and fermented malt liquors), for transfer from one zone to another, or for delivery to a qualified vessel or aircraft or as ground equipment of a qualified aircraft under section 309 or 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), unless the Board has ruled that the return of the merchandise to Customs territory for domestic consumption is in the public interest. With Board approval, that merchandise may be entered for comsumption, for warehousing, for immediate transportation without appraisement, or under any other provision of the Customs laws, unless the Board has speified the form of entry to be made.

(b) *Removal to Customs territory for consumption.* If the return of zone-restricted merchandise to Customs territory for consumption has been ruled by the Board to be in the public interest, the entry shall be endorsed by the district director to show the authority under which it was made, and that the merchandise is subject to the provisions of Schedule 8, Part 1, Tariff Schedules of the United States (19 U.S.C. 1202).

(c) *Removal to Customs territory for warehousing.* Zone-restricted merchandise may be transferred from a foreign-trade zone to a Customs bonded warehouse for storage pending exportation. The warehouse entry, Customs Form 7502, shall be endorsed by the district director to show that the merchandise may not he withdrawn for consumption. In the case of zone-restricted merchandise transported in bond to another port for warehousing and exportation, Customs Form 7512 shall be endorsed by the district director to show that the merchandise is foreign-trade zone merchandise in zone-restricted status, which shall be entered for warehouse, with proper endorsement on Customs Form 7502, and which may not be withdrawn for consumption. Zone-restricted merchandise transferred from a foreign-trade zone to a Customs bonded warehouse may not be manipulated, except for packing or unpacking incidental to exportation. Pursuant to section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), any merchandise placed in a Customs bonded warehouse may not remain in the warehouse after 5 years from the date of importation and no merchandise may be placed in a Customs bonded warehouse after 5 years from the date of importation.

(d) *Removal from zone for other purposes.* Upon acceptance of an entry or withdrawal for zone-restricted merchandise for any purpose other than that described in a Board order, the entry shall be endorsed by the person making entry to show that actual exportation of the merchandise is required by the fourth proviso to section 3 of the Act, as emended, or the entry endorsed to require delivery to a qualified vessel or aircraft, under section 309 or 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), in addition to the notations required in § 146.66.

§ 146.72 Transfer of domestic merchandise into Customs Territory.

(a) *Description of transaction.* Except as provided for in paragraph (d), when domestic merchandise which has not been mixed, combined or repacked in a zone with merchandise having a different zone status is to be transferred from the zone to Customs territory, the operator shall sign and submit to the district director, in triplicate, a description of the proposed transaction which must include:

(1) The proposed date of transfer;

(2) The identification of the carrier;

(3) The destination of the shipment; and

(4) Identification of the merchandise by zone storage location, lot number or unique identifier, marks and numbers of packages, description, quantity, and zone status. If a form of tally prepared and signed by the operator for its own purposes contains the necessary information, it may be accepted in lieu of the description required in this paragraph.

(b) *Permit of delivery.* If the transfer is approved by the district director, the original of the description will be so stamped to serve as a permit of delivery. The original and one copy will be returned to the operator. No document other than the permit of delivery will be required to release the merchandise to the operator and authorize its transfer into Customs territory.

(c) *Blanket submission.* The district director may accept from the operator a blanket submission describing all domestic merchandise transferred to the Customs territory in one day by the same zone tenant, on the next working day after the merchandise was physically removed from the zone. If the merchandise is subsequently found to be, or to include, merchandise in another zone status, the district director may demand redelivery of the

merchandise to the zone and assess liquidated damages and penalties as provided for in law and regulation.

(d) *When no permit required.* Merchandise in domestic status which has been admitted under § 146.14, and which has not been mixed or combined with merchandise of another status, may be removed from the zone without Customs permit using prudent business procedures.

§ 146.73 Release and removal of merchandise from zone.

(a) *In general.* Except as provided for in § 146.72 (c) or (d), no merchandise will be removed from a zone without a Customs permit on the appropriate entry or withdrawal form or other document as required in this part. The district director may authorize a removal under a permit without physical supervision of or examination by a Customs officer. Upon issuance of a permit, the district director will authorize delivery of the merchandise only to the operator, who then may release the merchandise to the importer or carrier.

(b) *Liability for discrepancy.* When a removal is not physically supervised by a Customs officer, the operator will be relieved of responsibility only for the merchandise in a zone in the condition any quantity as shown on the entry, withdrawal, or other appropriate form. The operator will be relieved of responsibility only if it receives the signed receipt on the removal document of the importer or the carrier named in that document. The responsibility of the operator may be adjusted by any discrepancy report made jointly by the operator and the bonded cartman, lighterman, or carrier, or the importer, and signed by the above or an authorized representative within 15 days after removal of the merchandise from the zone. Any adjustment must be noted on the permit copy of the entry, withdrawal, or other removal document. A copy of any joint report of discrepancy must be submitted to the district director within 2 working days of signing by the parties.

(c) *Time limit for removal.* Merchandise for which a Customs permit for removal has been issued, if not retained in or readmitted to a zone under paragraph (d) of this section, must be removed from the zone within 5 working days of issuance of the permit. The district director, upon request of the operator, may extend that period for good cause. Merchandise awaiting removal within the required time limit will not be further manipulated or manufactured in the zone, but will be segregated or otherwise identified by the operator as merchandise that has been constructively transferred to the Customs territory. The district director shall order merchandise not removed from the zone in the allotted time, to be carried away by a Government cartman to a location designated by the district director at the risk and expense of the importer named in the entry, withdrawal, or other removal document as required in this part.

(d) *Retention in zone of merchandise entered for consumption.* (1) Merchandise which has been entered for consumption may be retained in the same zone, without physical removal therefrom, in domestic status upon application to and permit granted by the district director for admission. The application must be filed within 5 working days after the entry of the merchandise, under the procedure set forth in § 146.39(b). An application for multiple entries will be submitted within 5 working days of the date of the earliest entry of merchandise covered by the application. The application will clearly identify the merchandise to be retained and state that the merchandise was entered from the same zone as that of retention, and list the entry number(s) and date(s). Merchandise which has undergone a change from a foreign status to domestic status in a zone, whether or not physically removed from that same zone to effect the change, will not be further processed in the zone. "Further processing," for the purposes of this section, includes machining, grinding, drilling, threading, punching, forming, plating, bolting, welding, painting, assemblying, and like operations.

(2) A component of merchandise which has been entered, but not physically removed from a zone will be restored to its last zone status, provided the district director determines that the component was included in the entry through clerical error, mistake of fact, or other inadvertance not amounting to an error in the construction of the law. Such an error, including that in appraisement of any entry or liquidation due to the above circumstances, may be corrected pursuant to section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), in accordance with the procedures described in Part 173 of this chapter. If the district director decides there has been no error, mistake, or inadvertance, or that the information was not timely provided, the component will be considered as overage and subject to the provisions of § 146.55(d).

Subpart G—Liquidated Damages; Penalties; Suspension; Revocation

§ 146.81 Liquidated damages.

(a) *Compliance with law and regulation.* The principal named on Customs Form 301 shall comply with:

(1) The law and regulations relating to admission, zone status, storage, exhibition, manipulation, manufacture, destruction, and removal of merchandise to, in, or from a zone; and

(2) The regulations contained in this part concerning inventory control and recordkeeping systems, and their maintenance, covering merchandise in a zone.

(b) *Payment of duty and tax.* The principal and surety shall pay liquidated damages equal to one time the value determined by Customs) of merchandise other than domestic merchandise for which no permit for admission is required (three times the value for restricted and alcoholic merchandise), which is discovered to be missing from a zone or cannot be accounted for in a zone. Such liquidated damages will be in addition to the full amount of any duties, taxes, and/or charges due, or estimated to be due, on the merchandise. The duty, tax, and/or charge in question will be determined solely by Customs.

(c) *Default not relating to merchandise.* If the principal defaults with respect to any of the terms or conditions of the Customs Form 301 provided for in § 113.73 of this chapter or the regulations in this part, not relating to merchandise, the principal and surety shall pay as liquidated damages an amount to be determined by the district director, but not to exceed $200 for each and every default, subject to guidelines and advice from Customs Headquarters.

(d) If the principal defaults on payment of the annual fee when due, the principal and surety agree to pay on demand by the district director as liquidated damages an amount equal to the annual fee due but not paid, and an amount equal to one percent of the annual fee for each day of the first 7 days the annual fee is in arrears, two percent of the annual fee for each of the succeeding 7 days the annual fee is in arrears, and three percent of the annual fee for each day thereafter in which the annual fee is in arrears.

(e) *Other agreement.* The principal and surety shall:

(1) Exonerate the United States and its officers from any risk, loss, or expense arising from the operation of a zone; and

(2) Pay the compensation and expenses of any Customs officer, as required by law or regulation.

§ 146.82 Penalties.

(a) *Amount.* Upon violation of the Act, or any regulation issued under the Act, by the grantee, or any officer, agent, or employee thereof, the person responsible for or permitting the violation shall be subject to a fine of not more than $1,000. Each day during which a violation continues will constitute a separate offense. Liquidated damages, where applicable, will be imposed in addition to the fine (19 U.S.C. 81s).

(b) *Review.* All fines assessed by the district director under this section will be reviewed by the Director, Entry Procedures and Penalties Division, Headquarters, to determine whether further action against the grantee or operator, such as suspension or a recommendation for revocation of the grant, is warranted.

§ 146.83 Suspension.

(a) *For cause.* The district director may suspend for cause the activated status of a zone or a zone site, or the privilege to receive, manufacture, manipulate, exhibit, destroy, or remove merchandise, at a zone for a period not to exceed 30 days, except that the district director may continue the suspension in any case where the operator fails to rectify, or fails to make a good faith effort to rectify the cause of the suspension. An action to suspend will be taken in accordance with the procedure set forth in paragraph (b) of this section if:

(1) The approval of the application to bond the zone was obtained through fraud or the misstatment of a material fact;

(2) The operator neglects or refuses to obey any proper order of a Customs officer or any Customs order, rule, or regulation relating to the operation or administration of a zone;

(3) The operator, or any officer of a corporation which has been granted the right to operate a zone, is convicted of or has committed an act that would constitute a felony, or would constitute a misdemeanor involving theft, smuggling, or a theft-connected crime.

(4) The operator fails to furnish a current list of names, addresses, or other information as required by § 146.7;

(5) The operator does not provide a secure facility or properly safeguard merchandise within a zone;

(6) The operator fails to pay within 30 days after the due date all annual fees associated with the operation of a zone;

(7) The bond required by § 146.6(b) is determined to be insufficient in amount or lacking sufficient surety, and a satisfactory new bond with good and sufficient surety is not furnished within a reasonable time;

(8) The operator, or any officer, agent, or employee of the operator, discloses to an unauthorized person proprietary information on a Customs form or contained in the inventory control and recordkeeping system; or

(9) The inventory control and recordkeeping system is impaired to the point where the identity of merchandise in zone status has been lost and cannot be reestablished without a suspension of zone operations.

(b) *Procedure*—(1) *Notice.* The district director may at any time serve notice in writing upon an operator to show cause why its right to continue operation of a zone should not be suspended as provided for in paragraph (a) of this section. The notice will advise the operator of the grounds for the proposed action and will afford the operator an opportunity to respond in writing within 15 days after receipt of the notice. Thereafter, the district director shall consider the allegations and any response made by the operator and issue a decision, unless the operator requests a hearing in the matter.

(2) *Hearing.* If the operator requests a hearing, it will be held before a hearing officer designated by the Comissioner of Customs or his designee within 30 days following the operator's request. The operator may be represented by counsel at the hearing, and any evidence and testimony of witnesses in the proceeding, including substantiation of the allegations and the response thereto will be presented, with the right of cross-examination to both parties. A stenographic record of the proceeding will be made and a copy will be delivered to the operator. At the conclusion of the hearing, the hearing officer shall transmit promptly all papers and the stenographic record of the hearing to the regional commissioner of the region in which the zone is located, together with a recommendation for final action.

(3) *Decision of regional commissioner.* Within 10 calendar days after delivery to the operator of a copy of the stenographic record of the hearing, the operator may submit to the regional commissioner in writing any additional views or arguments. The regional commissioner thereafter shall render a decision in writing, stating reasons therefore. That decision will be served on the operator and will be considered the final Customs administrative action in the case.

§146.84 Revocation of zone grant.

(a) *Recommendation of district director.* The district director may at any time recommend to the Board that the privilege of establishing, operating, and maintaining a zone or subzone under Customs jurisdiction be revoked for willful and repeated violations of the Act (19 U.S.C. 81r). If the district director believes that a substantial question of law exists as to whether willful and repeated violations of the Act have occurred, that officer should request internal advice under the provisions of Part 177 of this chapter from the Director, Carriers, Drawback and Bonds Division, Headquarters. A recommendation to the Board that a zone or subzone grant be revoked does not preclude, and may be in addition to, any liquidated damages, penalty, or suspension for cause.

(b) *Decision of the Board.* The procedure for revocation of a grant, the decision of the Board, and appeal, is covered by the provisions of the Act and Title 15, Chapter IV, Part 400, Code of Federal Regulations.

Conforming Amendments

Parts 18, 24, 112, 141, 144, and 191

To conform the Customs Regulations to the changes made by the proposed revision of Part 146, Customs Regulations, it is proposed to amend Parts 18, 24, 112, 141, 144, and 191 in the following manner:

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

It is proposed to amend § 18.2, Customs Regulations, in the following manner:

1. By revising the heading to paragraph (a)(1) to read "Merchandise other than from warehouse or foreign-trade zone delivered to bonded carrier."

2. By removing the words "subparagraph (2)" in the first sentence of paragraph (a)(1) and inserting, in their place, the words "paragraphs (a)(2) and (a)(3) of this section."

3. By adding a new paragraph (a)(3) to read as follows:

§18.2 Receipt by carrier; manifest.

(a) * * *

(3) *Merchandise delivered from foreign trade zone.* When merchandise is delivered from a foreign-trade zone to a bonded carrier for transportation in bond, supervision of lading will be accomplished in accordance with the

procedure set forth in § 146.73(a) of this chapter.

* * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

§ 24.13 [Amended]

It is proposed to amend the first sentence of paragraphs (c) and (f) of § 24.13, Custom Regulations, to insert the words "a foreign-trade zone operator," before the words "and bonded warehouse proprietors" and "a Customs bonded warehouse proprietor," respectively.

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

It is proposed to revise the last sentence of § 112.12(b)(3), Customs Regulations, to read as follows:

§ 112.12 Application for authorization.

* * * * *

(b) *Special requirements.*

* * * * *

(3) *Private carriers.* * * * If the private carrier is the proprietor of one or more Customs bonded warehouses or bonded container stations, or the operator of a foreign-trade zone, to which imported merchandise will be transported, he shall accompany the bond and copies of the bond by a statement showing the location of each warehouse and container station, or zone.

* * * * *

PART 141—ENTRY OF MERCHANDISE

It is proposed to revise § 141.111(d), Customs Regulations, to read as follows:

§ 141.111 Carrier's release order.

* * * * *

(d) *Qualified release order.* In the case of merchandise which is entered for warehousing, for transportation in bond, for exportation, or is to be admitted to a foreign-trade zone, the release order may be qualified as follows:

(1) "For transfer to the bonded warehouse designated in the warehouse entry," if the merchandise is entered for warehousing;

(2) "For transfer to the bonded carrier designated in the transportation entry," if the merchandise is entered for transportation in bond;

(3) "For transfer to the carrier designated in the export entry," if the merchandise is entered for exportation; or

(4) "For transfer to the foreign-trade zone designated in Customs Form 214," if the merchandise is to be admitted to a foreign-trade zone.

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. It is proposed to revise § 144.36(g), Customs Regulations, to read as follows:

§ 144.36 Withdrawal for transportation.

* * * * *

(g) *Procedure at destination.* Upon arrival at destination, the merchandise may be:

(1) Entered for rewarehouse in accordance with § 144.41;

(2) Entered for combined rewarehouse and withdrawal for consumption in accordance with § 144.42;

(3) Exported in accordance with paragraph (h) of this section;

(4) Forwarded to another port or returned to the port of origin in accordance with § 18.5 (c) or (d) of this chapter; or

(5) Admitted to a foreign-trade zone as provided in § 146.32 of this chapter.

* * * * *

2. It is proposed to amend § 144.37, Customs Regulations, by adding a new paragraph (g), to read as follows:

§ 144.37 Withdrawal for exportation.

* * * * *

(g) *Exportation at a foreign-trade zone.* Merchandise may be withdrawn for exportation at a foreign-trade zone in the same or at a different port. The merchandise will be considered exported upon admission to a zone in zone-restricted status, as provided in § 146.44(c) of this chapter.

PART 191—DRAWBACK

1. It is proposed to amend § 191.162, Customs Regulations, by removing reference to "§ 146.25," and inserting, in its place reference to "§ 146.44."

2. It is proposed to revise § 191.163 (c) and (d), Customs Regulations, to read as follows:

§ 191.163 Articles manufactured or produced in the United States.

* * * * *

(c) *Action of the district director on the notice of transfer.* The district director shall assign a number to each notice of transfer, return one copy to the transferor and forward another copy to the zone operator at the foreign-trade zone.

(d) *Action of foreign-trade zone operator.* After articles have been received in the zone, the zone operator at the zone shall certify on a copy of the notice of transfer the receipt of the articles (see § 191.164(d)(2)) and forward the notice to the transferor or the person designated by the transferor. The transferor shall verify that the notice has been certified before filing it with the drawback entry.

* * * * *

3. It is proposed to revise paragraphs (b) and (c) of § 191.164, Customs Regulations, to read as follows:

§ 191.164 Merchandise transferred from continuous Customs custody.

* * * * *

(b) *Drawback entry.* Before the transfer of merchandise from continuous Customs custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the district director a direct export entry on Customs Form 7512 in duplicate. The district director shall forward one copy of Customs Form 7512 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 7512 the receipt of the merchandise (see paragraph (d)(2) of this section) and forward the form to the transferor or the person designated by the transferor. After executing the certifications provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 7512 to the district director in place of the bill of lading required by § 191.136.

* * * * *

4. It is proposed to revise paragraphs (b) and (c) of § 191.165, Customs Regulations, to read as follows:

§ 191.165 Same condition drawback merchandise and merchandise not conforming to sample or specifications or shipped without the consent of the consignee.

* * * * *

(b) *Drawback entry.* Before transfer of the merchandise to a foreign-trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the district director an entry on Customs Form 7539 in duplicate. The district director shall forward one copy of Customs Form 7539 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 7539 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor. After executing the certifications provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 7539 to the

district director in place of the bill of lading required by § 191.136.

* * * * *

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: June 29, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

PARALLEL REFERENCE TABLE

[This table shows the relationship of sections in revised Part 146 to superseded Part 146]

Revised section	Superseded section
146.0	146.0.
146.1(a)	146.1(a).
146.1(b)	New.
146.1(c)	New.
146.1(d)	146.1(b).
146.1(e)	146.1(c).
146.1(f)	New.
146.1(g)	146.1(d).
146.1(h)(1), (2)	146.1(e)(1), (2).
146.1(h)(3), (4)	New.
146.1(i)	New.
146.1(j)	New.
146.1(k)	New.
146.1(l)	146.1(f).
146.2	146.2.
146.3(a)	146.3.
146.3(b)	New.
146.4	New.
146.5	146.4.
146.6	New.
146.7	New.
146.8	New.
146.9	146.5.
146.10	146.6.
146.11(a), (b), (c)	146.7(a), (b), (c).
146.11(d)	New.
146.12	146.8.
146.13	New.
146.14	New.
146.15	New.
146.16	New.
146.17	New.
146.21	New.
146.22	New.
146.23	New.
146.24	New.
146.25	New.
146.26	New.
146.31	146.11.
146.32(a)	146.12(a).
146.32(b)(1)	New.
146.32(b)(2)	146.12(b)(1)(ii).
146.32(b)(3)	146.12(b)(1)(i).
146.32(b)(4)	146.12(b)(2).
146.32(b)(5)	New.
146.32(c) (1), (2) & 4	146.12(c) (1), (2), (3).
146.32(c)(3)	New.
146.32(d)	New.
146.33	146.13.
146.34	146.14.
146.35	New.
146.36	New.
146.37	New.
146.38	146.15.
146.39	New.
146.40	New.
146.41(a), (b), (c)	146.21(a), (b), (c)(1)(2).
146.41(d)	146.21(c)(3)(i), (v).
146.41(e)	146.21(c)(3)(iv).
146.41(f)	146.21(d).
146.42	146.23.
146.43	146.22, 146.24.
146.44(a), (b), (c)(d)	146.25(a), (b), (c)(d).
146.51	146.31(a), (b).
146.52(a)(1)	146.32(a).
146.52(a)(2)	New.
146.52(b)(1)	146.32(b).
146.52(b)(2)	146.21(f).
146.52(c)	146.32(c).
146.52(d)(1)	146.32(d)(1).
146.52(d)(2)	New.
146.53(a), (b)	146.33(a), (b).
146.53(c)	New.
146.54	New.
146.55(a)(1), (3), (4), and (b)	146.31(c).
146.55(a)(2), (c), (d), and (e)	New.

PARALLEL REFERENCE TABLE—Continued

[This table shows the relationship of sections in revised Part 146 to superseded Part 146]

Revised section	Superseded section
146.61	146.48(b).
146.62	146.45(b)(2), (c)(2).
146.63(a)(1)	146.45(a).
146.63(a)(2)	146.46(a).
146.63(a)(3)	146.48(a)(1).
146.63(a)(4)	146.48(a)(2).
146.63(a)(5)	146.48(a)(3).
146.63(b)(1)	146.45(b)(1), 146.46(b)(1), 146.48(c), (d).
146.63(b)(2)	New.
146.63(c)	New.
146.63(d)	New.
146.63(e)(1)	146.45(c)(1), 146.46(c).
146.63(e)(2)	146.46(b)(2).
146.63(e)(3)	146.45(c)(4).
146.63(e)(4)	146.45(c)(2).
146.64(a)	146.48(c).
146.64(b)	146.47(e)(4).
146.64(c)	New.
146.65(a)	New.
146.65(b)(1)	146.21(c)(3)(i), 146.45(b)(4), (c)(6).
146.65(b)(2)	146.(e)(1).
146.65(c)	146.48(e)(2).
146.65(d)(1)	146.48(f).
146.65(d)(2)	New.
146.66	New.
146.67(a)	146.43(a).
146.67(b)(1)	New.
146.67(b)(2)	146.43(b)(1).
146.67(c)	146.43(b)(2).
146.67(d)	New.
146.68(a)	146.41.
146.68(b), (c)	146.45(d), 146.46(d).
146.68(d)	New.
146.68(e)	146.46(e).
146.69	New.
146.70	146.42.
146.71(a)	146.47(a).
146.71(b)	146.47(e)(3).
146.71(c)	146.47(e)(4).
146.71(d)	146.47(e)(3).
146.72(a)(b)	146.44(a), (b).
146.72(c)	New.
146.72(d)	New.
146.73	New.
146.81	New.
146.82	New.
146.83	New.
146.84	New.

PARALLEL REFERENCE TABLE

[This table shows the relationship of sections in superseded Part 146 to revised Part 146]

Old section	New section
146.0	146.0.
146.1(a)	146.1(a).
146.1(b)	146.1(d).
146.1(c)	146.1(e).
146.1(d)	146.1(g).
146.1(e) (1) and (2)	146.1(h) (1) and (2).
146.1(f)	146.1(l).
146.2	146.2.
146.3	146.3(a).
146.4	146.5.
146.5	146.9.
146.6	146.10.
146.7 (a), (b), and (c)	146.11 (a), (b), and (c).
146.8	146.12.
146.11	146.31.
146.12(a)	146.32(a).
146.12(b)(1)(i)	146.32(b)(3).
146.12(b)(1)(ii)	146.32(b)(2).
146.12(b)(2)	146.32(b)(4).
146.12(c) (1), (2), and (3)	146.32(c) (1), (2), and (4).
146.13	146.33.
146.14	146.34.
146.15	146.38.
146.21 (a), (b), and (c)(1)(2)	146.41 (a), (b), and (c).
146.21(c)(3) (i) and (v)	146.41(d); 146.65(b)(1).
146.21(c)(3) (ii) and (iii)	Removed.
146.21(c)(3)(iv)	146.41(e).
146.21(d)	146.41(f).
146.21(e)	Removed.
146.21(f)	146.52(b)(2).

PARALLEL REFERENCE TABLE—Continued

[This table shows the relationship of sections in superseded Part 146 to revised Part 146]

Old section	New section
146.22	146.43.
146.23	146.42.
146.24	146.43.
146.25	146.44.
146.31(a)(b)	146.51.
146.31(c)	146.55(a) (1), (3), (4), and (b).
146.32(a)	146.52(a)(1).
146.32(b)	146.52(b)(1).
146.32(c)	146.52(c).
146.32(d)(1)	146.52(d)(1).
146.32(d)(2)	Removed.
146.33	146.53 (a) and (b).
146.41	146.68(a).
146.42	146.70.
146.43(a)	146.67(a).
146.43(b)(1)	146.67(b)(2).
146.43(b)(2)	146.67(c).
146.44	146.72 (a) and (b).
146.45(a)	146.63(a)(1).
146.45(b)(1)	146.63(b)(1).
146.45(b)(2)	146.62.
146.45(b)(3)	Removed.
146.45(b)(4)	146.65(b)(1).
146.45(b)(5)	Removed.
146.45(c)(1)	146.63(e)(1).
146.45(c)(2)	146.62; 146.63(e)(4).
146.45(c)(3)	Removed.
146.45(c)(4)	146.63(e)(3).
146.45(c)(5)	Removed.
146.45(c)(6)	146.65(b)(1).
146.45(d)	146.68(b).
146.46(a)	146.63(a)(2).
146.46(b)(1)	146.63(b)(1).
146.46(b)(2)	146.63(e)(2).
146.46(c)	146.63(e)(1).
146.46(d)	146.68(c).
146.46(e)	146.68(e).
146.47(a)	146.71(a).
146.47 (b), (c), (d), (e), (1) and (2).	Removed.
146.47(e)(3)	146.71 (b) and (d).
146.47(e)(4)	146.64(b); 146.71(c).
146.47(f)	Removed.
146.48(a)(1)	146.63(a)(3).
146.48(a)(2)	146.63(a)(4).
146.48(a)(3)	146.63(a)(5).
146.48(b)	146.61.
146.48 (c) and (d)	146.63(b)(1); 146.64(a).
146.48(e)(1)	146.65(b)(2).
146.48(e)(2)	146.65(c).
146.48(f)	146.65(d)(1).

Appendix A—Calculation of Foreign Trade Zone Activation and Alteration Fees

Note.—The following appendix will not appear in the Code of Federal Regulations.

A. Activation and Alteration Process

Before an application for a foreign trade zone, noncontiguous zone site with an operator different from already-activated site(s), or a subzone is approved by the District Director, the following tasks must be accomplished:

1. Determine that the application is in proper form;

2. Survey the premises to determine if all physical requirements are met;

3. Perform a background investigation of the applicant and the applicant's officers and employees;

4. Prepare a report of the survey and investigation; and

5. Review the application, survey and investigation reports, and other

pertinent information, and prepare a response to the applicant.

Customs must also preform a background investigation of any new operator selected for an operating agreement with the grantee, after initial activation, and assumes that a new operator is selected on the average of every seven years.

Tasks similar to those for activation must be accomplished when an application for alteration is filed with the District Director, except that no background investigation is required.

B. Activation Fee for General-Purpose Zones

The following cost elements are included in the activation fee for general-purpose zones. The costs of the tasks performed by a Customs Special Agent have been increased by one-seventh to cover the cost of subsequent background investigations of new zone operators, rather than charge a separate fee upon application for approval of new operators.

Element	Title	Average grade	Average hours	Hourly rate
Initial application review	Clerk	(GS-5/5)	(1)	($3.81)
Premises survey	Inspector	(GS-11/5)	(15)	(18.23)
Background investigation	Agent	(GS-12/5)	(27)	(21.92)
Typing reports and response	Clerk	(GS-5/5)	(4)	(3.81)
Final review	Administrator	(GS-13/5)	(3)	(26.07)

Travel—3 round trips×40 miles×20 cents per mile ($24).
The fee is rounded off to the nearest $10 ($1,020).

C. Activation Fee for Subzones and Certain Noncontiguous Zone Sites

The following cost elements are included in the activation fee for subzones and for noncontiguous zone sites having a different operator than the already-activated site(s). Normally, the operator of a noncontiguous zone site with an operator different from other sites is a manager of a single enterprise that occupies the entire site, and is treated, for activation purposes, as a subzone operator.

Element	Title	Average grade	Average hours	Hourly rate
Initial application review	Clerk	(GS-5/5)	(2)	($3.81)
Premises survey	Inspector	(GS-11/5)	(18)	(18.23)
Background investigation	Agent	(GS-12/5)	(55)	(21.92)
Typing reports and response	Clerk	(GS-5/5)	(5)	(3.81)
Final review	Administrator	(GS-13/5)	(4)	(26.07)

Travel—3 round trips×60 miles×20 cents per mile ($36).
The fee is rounded off to the nearest $10 ($1,960).

D. Alteration Fee for Zones and Subzones

The following cost elements are included in the alteration fee for all zones, zone sites, and subzones. No background investigation is made upon alteration, so no cost for that element is included.

Element	Title	Average grade	Average hours	Hourly rate
Initial application review	Clerk	(GS-5/5)	(1)	($3.81)
Premises survey	Inspector	(GS-11/5)	(14)	(18.23)
Typing reports and response	Clerk	(GS-5/5)	(3)	(3.81)
Final review	Administrator	(GS-13/5)	(2)	(26.07)

Travel—2 round trips×40 miles×20 cents per mile ($16).
The fee is rounded off to the nearest $10 ($360).

E. Administration of Fees

The above amounts in parentheses indicate cost estimates for Customs for Calendar Year 1983 and 1984. The fee will be adjusted annually to take into account changes in Customs employee pay scales, and adjusted periodically for changes in investigation and survey practices and other factors that affect the way applications for activation and alteration are processed. On December 1 of each year, the fee will be announced to the public for collection during the coming calendar year.

The hourly rate listed for Customs employees includes an amount (37 percent) added for fringe benefits. The fringe benefit amount is calculated according to § 24.17(d), Customs Regulations.

The activation fee covers all sites of a zone or subzone at the time of the original activation. The alteration fee is separate for each site in respect to which an alteration takes place.

Example: If an already activated zone wishes to activate two new noncontiguous sites under the same operator, the fee is 2×$360 or $720.

The fee is payable with the applications for activation or alteration. The District Director will provide a receipt for the fee to applicants on Customs Form 5104, Cash Receipt.

Appendix B—Calculation of Annual Fees

Note.—The following appendix will not appear in the Code of Federal Regulations.

A. Distinction Between Small and Large General-Purpose Zones

Small zones are those with less than $10,000,000 worth of combined receipts

and deliveries of merchandise, foreign and domestic, for the latest reporting year. Large zones are those with more than $10,000,000 of receipts and deliveries. The dollar volume is the amount reported to the Foreign Trade Zones Board for the latest year in which they are available to the District Director. New general-purpose zones for which no amount has yet been reported are assumed to be small zones.

Subzones to which the special subzone fee (see B. of this appendix) does not apply will have the same fee as a general-purpose zone of a corresponding dollar value of receipts and deliveries.

B. Fee for Small General-Purpose Zones

The annual fee for small general-purpose zones will be computed from the following annual Customs cost elements:

Element	Average hours	Title	Average grade	Hourly rate
Merchandise examination	(6)	Inspector	(GS-9/5)	($15.12)
Spot check inspections	(16)	Sr. Inspector	(GS-11/1)	(16.17)
Audits	(67)	Auditor	(GS-12/1)	(19.35)
Clerical support	(10)	Clerk/typist	(GS-5/1)	(8.81)
Management and supervision	(5)	Supervisor	(GS-14/1)	(27.18)

Plus travel and per diem costs, mostly for audits ($691).
Fee will be rounded off to nearest $100 ($2,600).
The amounts above in parentheses represent estimates for Calendar Year 1983 and 1984.

C. Fee for Large General-Purpose Zones

The annual fee for large general-purpose zones will be computed from the following annual Customs cost elements:

Element	Average hours	Title	Average grade	Hourly rate
Merchandise examination	130	Inspector	GS-9/5	$15.12
Spot check inspections	64	Sr. Inspector	GS-11/1	16.17
Audits	167	Auditor	GS-12/1	19.35
Clerical support	15	Clerk/typist	GS-5/1	8.81
Management and supervision	7	Supervisor	GS-14/1	27.18

Plus travel and per diem, mostly for audits ($1,084).
Fee rounded off to nearest $100 ($7,600).

D. Fee for Subzones and Noncontiguous Zone Sites

The annual fee for subzones and noncontiguous zone sites will be tailored according to the characteristics of the particular zone situation. Customs costs will be estimated by the Regional Commissioner in November of each year for the following calendar year and reported to each affected subzone and zone site operator in the region not later than December 1 of each year. For new subzones and noncontiguous zone sites the estimated costs will be those incurred by Customs between approval of the application for activation and the end of the current calendar year, and reported to the subzone or zone site operator before approval of the application.

The costs will be calculated by the Regional Commissioner according to the following guidelines:

1. Merchandise examinations

Number of examinations per year X avarage time for examination X hourly rate plus 37 percent of average grade level of officers who perform examinations. Examination costs for covered subzones and zone sites should be low because the nature of these sites precludes examination of most merchandise.

2. Spot check inspections

Number of spot checks per year X number of officers per spot check X average time per spot check, including tactical planning X hourly rate plus 37 percent of average grade level of officers who conduct spot checks.

3. Audits

Number of staff-hours per audit divided by frequency of audit X hourly rate plus 37 percent of average grade level of officers who conduct audit.

4. Clerical support

Number of staff-hours for filing Customs Form 214 for spot check planning, typing and filing spot check reports, typing and filing audit reports, typing and filing liquidated damages notices, preparing work schedules, and performing miscellaneous clerical support tasks related to individual subzone or noncontiguous zone site X hourly rate plus 37 percent of average grade level of employees who provide clerical support.

5. Management and supervision

Number of staff-hours for planning spot check and audit programs, reviewing spot check and audit reports, supervising spot check and audit personnel, reviewing liquidated damages notices and petitions, meeting with operators concerning results of spot checks and audits, and providing Headquarters and regional operational program support X hourly rate plus 37 percent of average grade level of supervisors and managers who perform these tasks in relation to the subzone or zone site.

6. Travel and per diem

a. *Spot checks.* Number of spot checks per year X round trip mileage to site X current mileage reimbursement rate (or number of spot checks X common carrier passenger fare), plus other reimbursable costs to officer (tolls, parking, per diem or actual expenses), where applicable.

b. *Audits.* Round trip common carrier passenger fare (or round trip mileage to site X current mileage reimbursement rate), plus per diem or actual expenses as fixed by the U.S. Government, plus other reimbursable costs (rental vehicle, tolls, parking, etc.), all of the foregoing divided by the frequency of the audit, i.e., the number of years from one audit to the next.

E. General Information About Fees

1. The estimates for general-purpose zones will be adjusted annually to reflect U.S. employee pay changes and periodically to reflect changes in average grade levels for the tasks and time consumed in the activity element. All elements for subzones and covered non-contiguous zone sites will be adjusted annually. All fees will be rounded off the nearest $100.

2. The hourly rates will be at the current General Schedule pay levels as of December 1 of each year, plus 37 percent for fringe benefits, calculated as noted in § 24.17(d), Customs Regulations.

3. All costs are estimates for the calendar year and will remain the same for the zone regardless how much time is consumed or how many employees are actually involved in zone supervision activities. The amount of Customs staff-hours actually spent in a zone in a given year is not necessarily indicative of Customs estimated costs for the following year.

4. Audit costs are prorated over the number of years anticipated from one audit to the next.

5. Costs for general purpose zones are prorated over the number of zones in the same large or small size category.

6. The annual fees will be recalculated each year and announced on December 1 for the coming calendar year. They will be announced by the District Director for the zones within his or her jurisdiction.

7. The fees are due and payable upon approval of the application for activation and on January 1 of each subsequent calendar year. The annual fee paid upon approval of the application shall be prorated by the District Director over the full and partial months remaining in the calendar year.

8. The fees shall be paid within 14 calendar days of the due date. If not timely paid, liquidated damages shall be assessed under the bond rider. Action may be taken to suspend activation when payment of the fee is in arrears more than 30 days. There shall be no refund of any annual fees paid to the District Director because of deactivation or suspension of activation of a zone, or termination of activation.

9. The fees cover all of the sites of a zone or subzone operated by the same operator within the jurisdiction of the same port.

10. Payment of the fees shall be made according to the procedures in § 24.1, Customs Regulations. The District Director shall provide a receipt on Customs Form 5104, Cash Receipt.

Appendix C—Initial Regulatory Flexibility Analysis on Proposed Customs Regulations Amendments Relating to Foreign Trade Zones

Note.—The following appendix will not appear in the Code of Federal Regulations.

Introduction

The economic impact review below constitutes the Customs Service initial regulatory flexibility analysis in compliance with the requirements of section 3 of the Regulatory Flexibility Act (5 U.S.C. 603). The Act requires that regulatory effects be analyzed so as to determine and quantify, if possible, the economic effects of proposals on small business operations. The Act's key concepts revolve around identifying "significant economic impacts on a substantial number of small entities." The initial analysis will be modified as necessary into a final regulatory flexibility analysis upon receipt and review of public comments resulting from Federal Register publication of this notice of proposed rulemaking.

Rationale

The number of Foreign Trade Zones, complexity of operations and volume of trade passing through zones has increased significantly in recent years. From less than 20 zones in the early 1970's, activated zones and sub-zones at the end of 1982 numbered 65, with 22 pending applications for new zones and 19 approved but not activated zones.

Meanwhile, Customs inspection and supervision of zone activity has changed little in practice. Secular reductions in agency resources have combined with unchanged practices to produce (1) operational hardships on zone grantees and tenants and (2) uncertain inspection and control of zone activity.

The proposed revisions to 19 CFR Parts 18, 24, 112, 141, 144 and 146 (relating to Customs administration of foreign trade zones) and 191 is an administrative attempt to update zone supervision in accordance with current business practices.

Objectives

The proposal is intended to bring about three fundamental changes:

(1) The method of accountability of merchandise admitted stored, manipulated, exhibited, manufactured and removed from zones;

(2) The method of enforcement of Customs laws through audits and spot checks instead of more costly physical presence of inspectional resources; and

(3) The method of reimbursing Customs for its zone-related operational expenses.

Legal Basis for Proposal

This regulatory project is initiated under the authority of R.S. 251, as amended, sections 1–21, 48 Stat. 998, 999, as amended, 1000, 1002, as amended, 1003, 77A Stat. 14, section 624, 46 Stat. 759 (19 U.S.C. 66, 81a–81u, 1202 (General Headnote 11), 1624).

Estimated Number of Small Entities Affected

Tallies of zone activity in Customs regions indicate that approximately 1,500 tenants occupy space in zones and carry out the range of permitted manipulation, manufacturing and storage activities. Of these, 600 operate on a full-time, year-round basis. The remaining 900 operate on a part-time basis. These estimates do not include tenants in foreign trade sub-zones. Sub-zone tenants tend to be large (oftentimes multinational) corporations and thus do not fit within the purview of the requirements of the Regulatory Flexibility Act which concentrate on small business concerns.

Economic Effects of Compliance With the Proposal

After review of the proposal's work plan, we have identified within the proposal the following six procedural/administrative and fee-related changes likely to affect economic concerns of small business:

A. Procedural administrative changes
1. Inventory, record keeping and control system
2. Operators' control over admission and removal of goods.
3. Elimination of Customs forms 7502/7505/215
4. Mandatory bonding

B. Fee changes
1. Elimination of present form of reimbursement to Customs
2. Annual fee covering audits and spot checks
3. Zone activation and boundary alteration fee.

A. Procedural/Administrative Changes

Inventory record keeping and control system. An inventory record keeping and control system with Customs prescribed data will result from this proposal. A similar system (Alternative Inventory Control System) has been in effect since 1976 and currently operates at 7 general purpose zones. Data required for the new system will consist of standard business data currently collected and tabulated for small tenants by each zone's operator/grantee. We do not anticipate a significant net reporting burden on tenants or operators as a result of this segment of the proposal.

Operators' control over admission and removal of goods. Under present Customs supervision, a Customs officer must be present to clear admissions of merchandise to and removals of merchandise from a zone, thus limiting these transactions to the availability of a Customs officer. Under the present proposal, an operator will be able to admit and remove merchandise without a Customs officer being present, after receiving Customs approval. However, Customs approval for admission will require an invoice in support of the application for admission on CF 214 and that the merchandise be retained for Customs examination at the place of unlading, the zone, or other locations designated by the district director. Presentation of an invoice and merchandise examination prior to admission are not currently required and will represent an additional paperwork requirement and possible delay in the arrival of merchandise at the zone. Customs approval for removals will be simplified by a reduction in paperwork as outlined in

the next section. In total, the additional admission requirements will be offset by the simplified removal procedure and the enhanced business flexibility derived from being able to admit or remove merchandise freely into and out of the zone after Customs approval has been received.

Forms elimination—Customs Forms 7502/7505/215. Under present practice, Customs forms 7502 and 214 are required to obtain privileged foreign status. Removal of privileged foreign status merchandise from a zone requires filing CF 7505 for consumption. CF 215 is required to remove all zone status merchandise, except merchandise in privileged status or wholly composed of merchandise in privileged status. The estimated number of forms filed in FY 1982 appear in Table 1 below.

TABLE 1

Form:	
7502	10,000
7505	20,000
215	40,000

Under a provision of this proposal, a request for privileged foreign status would require a CF 214 and invoice (as before) but would eliminate the CF 7502. Upon removal of privileged foreign status goods from a zone, the applicable entry form would replace the 7505 (no net gain or loss). Further, the CF 215 will be eliminated under this proposal. Current clerical, data base management and brokerage costs for an estimated 50,000 forms 7502/215 would be eliminated, giving small businesses a net gain on the order of $550,000 yearly from this procedural change.

Mandatory bonding. One of the major proposed changes in zone administration is to involve the operator/grantee in data keeping and reporting. A new mandatory bond at a minimum level of $50,000 would be required in another provision of the proposal, with the goal of encouraging operator/grantee accuracy in compliance with his new responsibilities. The new bond would cover non-compliance with these proposed regulations as well as losses of merchandise. In terms of practical effects of this provision on small businesses, we anticipate no net appreciable added burden or cost. Most activated zones currently have bonds which meet or exceed the proposed minimum level.

B. Fee Changes

Elimination of present form of customs reimbursement. Under present practices, operators/grantees reimburse Customs for inspectional services rendered at zones. In fiscal year 1982, payments to Customs totaled an estimated $1.6 million, of which $1.2 million pertain to operations at general purpose zones. Assuming operators charge tenants flat fees to recover these payments, then each small tenant pays an average of $800 per year for these present Customs services. The proposed revisions would *eliminate* this $1.2 million present fee, substituting in its place (see below) tiered fees which would cover Customs costs in carrying out audits and spot checks.

A particular concern is underscored at this point, concerning the distribution of this $1.2 million benefit (eliminated Customs reimbursement). The 52 general purpose zones at the end of FY 1982 are widely distributed around the country. A small business interested in participating in a foreign trade zone generally finds itself limited to one and only one zone provider in its operating area. The offering of foreign trade zone services could thus be regarded as a monopolistic market condition. Significant administrative and application costs in seeking approval and setting up a zone essentially prevents access by (especially small) businesses. In essence, then they must generally contract with the sole established zone operator in that geographic area.

In economic theory, the pricing practices of a good/service provided under monopolistic conditions are oriented towards extracting a maximum profit for the unique provider, and, in practice, the level of fees charged by some zone operators/grantees is a known concern of the Commerce Department's Foreign Trade Zone Board.

As stated above, average savings per tenant from elimination of Customs reimbursement is expected to approximate $800 per year. Based on actual trade zone market conditions, however, real actual savings to tenants may total well below the average $800/year. We expect that zone operator/grantees will pass through to small tenants only a portion (quite possibly small) of the total $1.2 million estimated benefit of this provision of the proposed regulation. Data submitted on this subject during the period of public comments would be especially valued in either firming up or altering our estimate of this provision's benefit to small business concerns.

Annual fee. Calendar years 1983 and 1984 based fee schedule is tiered. "Small" general purpose zones are defined as those whose receipts and deliveries total $10 million or less per year; "large" zones, greater than $10 million. At the end of FY 1982, about 35 of the 52 active general purpose zones were "small" for the purposes of this proposal. Small zones are to be charged an annual fee of $2,600; large zones, $7,600. Fees for sub-zones and single-purpose zones are to be determined locally by the appropriate Customs regional commissioner. Since sub-zone tenants are generally large companies, the effects of fees on them do not fall within the purview of the RFA and this analysis and thus will not be considered in this economic review. While these fees are subject to annual revision and adjustments in order to insure recovery of Customs costs, prospects of federal pay and benefit restraint act to limit prospective fee increase to modest levels. The net burden on small business from this fee schedule (yielding $224,000/yr.) would be minimal, approximating $150 per tenant per year. Elimination of the current reimbursement method, even under the caveats noted above, would more than cover these new audit-approach fees.

New zone activation and boundary alteration fees. Under present procedures, zone applicants are not billed for necessary Customs preparatory work prior to a zone's activation or alteration. The proposed revisions contain a provision allowing Customs to recover its costs for such tasks, among others, as site surveys, background investigations, zone approval processing, inventory systems review and associated clerical costs. These fees would be applicable to zones which are activated, reactivated (in certain situations) or altered on or after the effective date of final rulemaking.

Prospective fees are currently estimated at the following:

(a) $1,020 for general purpose zone activation/reactivation;

(b) $1,960 for sub-zone activation/reactivation; and

(c) $360 for zone and sub-zone alterations.

Concerning effects on small businesses, we expect average added cost pass-throughs from this source to be insignificant.

Overlapping Rules

None identifiable.

Alternative Proposals

None feasible. The *Status Quo* becomes more untenable as complex zone manufacturing operations increase in number while Customs resources diminish.

Summary of Economic Effects

Based on present available data, the proposed revisions would appear to provide net yearly benefits to zone operators and tenants of $1.5–$1.6 million, as summarized below:

[Quantified cost (–)/benefits (+)]

Document reduction	+$550,000
Current reimbursement eliminated	+1,200,000
New annual fees for audit approach	–224,000
Total	+1,526,000

	Non-qualified factors		
	Added costs	New benefits	Neutral effect
Admission of goods	X		
Removal of goods		X	
Inventory control and record keeping system			X
Mandatory bonding			X

E.O. 12291

Executive Order 12291 relates to regulatory changes which are classified as "major rules", that is, proposals which will have (1) an aggregate economic cost factor of $100 million or more, (2) a major increase in prices or costs or (3) a significant adverse effect on competition. Under those criteria, we do not consider this proposal to be a "major rule", and thus the agency does not intend to perform an initial regulatory impact analysis that would be required by the Order.

[FR Doc. 84-18734 Filed 7-16-84; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Parts 171 and 172

Proposed Customs Regulations Amendments Relating to Delegation of Authority to District Directors of Customs

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to increase the authority of district directors of Customs to act on petitions for relief in administrative cases involving penalties, forfeiture, or claims for liquidated damages, incurred for violations of the customs or navigation laws and regulations. The Customs Regulations would also be amended to provide that the authority to act on certain supplemental petitions would be retained by the Commissioner of Customs. It is expected that this proposed delegation of further authority to district directors will result in more expeditious processing of less complex cases, thereby benefitting the importing and traveling public.

DATE: Comments must be received on or before September 17, 1984.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5746).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), the Secretary of the Treasury is empowered to mitigate or remit fines, penalties, or forfeitures that are incurred under the customs or navigation laws. Section 623(c), Tariff Act of 1930 (19 U.S.C. 1623(c)) empowers the Secretary to cancel any charge made against a bond for breach of any condition of the bond, upon payment of a lesser amount or penalty or upon such other terms and conditions as the Secretary may deem sufficient. By Subdivision 1(h) of Treasury Department Order No. 165, Revised (T.D. 53654), the Secretary delegated authority to the Commissioner of Customs to act on all cases where the claim for liquidated damages, fine or penalty (including the forfeiture) is not in excess of $100,000. This Order granted full mitigation authority to the Commissioner for specifically listed violations, including all liquidated damages claims.

The Commissioner, by regulation, has delegated some of his mitigation authority to district directors of Customs. Pursuant to § 171.21, Customs Regulations (19 CFR 171.21), district directors are empowered to mitigate or remit fines, penalties, or forfeitures incurred under any law administered by Customs when the total amount of fines or penalties incurred with respect to any one offense, together with the value of any merchandise subject to forfeiture, does not exceed $25,000. Under § 172.21, Customs Regulations (19 CFR 171.21), district directors may cancel claims for liquidated damages arising from breaches of the terms or conditions of any bond when the claim is $50,000 or less. For certain liquidated damages claims the district director is given full authority to act upon the claim, without regard to the amount of the claim. These claims, which include most notably the failure to file timely entry summaries, are outlined in § 172.22, Customs Regulations (19 CFR 172.22).

Pursuant to §§ 171.33 and 172.33, Customs Regulations (19 CFR 171.33, 172. 33), regional commissioners of Customs are currently empowered to consider supplemental petitions for relief in all cases acted upon by the district directors. Such review is mandated if there has been a specific request on the part of the petitioner for reconsideration by the regional commissioner, or if the district director believes no additional relief is warranted, or if the petitioner is not satisfied with the additional relief granted by the district director.

Over the years it has become clear that district directors can handle many of the less complex cases competently, and more expeditiously than Customs Headquarters. Accordingly, it is proposed to amend the regulations to increase the district directors authority, to compensate for the effects of inflation. District directors would be allowed to decide cases when the liability is $100,000 or less, except with respect to violations of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), in which the jurisdictional amount would remain at $25,000 or less. Supplemental petition review authority would be retained by the Commissioner if the amount of the liability is between $25,000 and $100,000 (inclusive) with respect to penalty and forfeiture cases, and between $50,000 and $100,000 (inclusive) with respect to liquidated damages cases. The regional commissioners would have this review authority if the liability is $25,000 or less in penalty and forfeiture cases, $50,000 or less in liquidated damages cases.

It is expected that this delegation of further authority to district directors will result in the more expeditious handling of petitions for relief, thereby benefiting both travelers and members of the importing public who have incurred liabilities for violations of the customs and navigation laws. The Commissioner would retain supplemental petition review authority for fines, penalties, or forfeiture case over $25,000, and liquidated damages case over $50,000.

It is also expected that this delegation will be accompanied by a program for increased monitoring of the disposition of cases within Customs field offices, as well as an expanded training program for fines and penalties personnel. This will be necessary to ensure uniformity among the district offices in their application of statutes, regulations, policies, procedures, and guidelines used in the disposition of fines, penalties, and forfeiture cases.

Comments

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

Regulatory Flexibility Act

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

Drafting Information

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

Authority

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), section 1, 19 Stat. 247, 249 (19 U.S.C. 197), section 1, 36 Stat. 965 (19 U.S.C. 198), section 624, 46 Stat. 759 (19 U.S.C. 1624), section 641, 46 Stat. 759, as amended (19 U.S.C. 1641), section 648, 46 Stat. 762 (19 U.S.C. 1648).

List of Subjects

19 CFR Part 171

Administrative practice and procedure, Law enforcement, Penalties, Seizures and forfeitures.

19 CFR Part 172

Administrative practice and procedure, Penalties.

Proposed Amendments

It is proposed to amend Parts 171 and 172, Customs Regulations (19 CFR Part 171, 172), as set forth below:

PART 171—FINES, PENALTIES, AND FORFEITURES

1. It is proposed to revise § 171.21 to read as follows:

§ 171.21 Petitions acted on by district director.

The district director may mitigate or remit fines, penalties, and forfeitures incurred under any law administered by Customs, with the exception of penalties or forfeitures incurred under the provisions of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), on such terms and conditions as, under the law and in view of the circumstances, he shall deem appropriate, when the total amount of the fines and penalties incurred with respect to any one offense, together with the total value of any merchandise or other article subject to forfeiture or to a claim for forfeiture value, does not exceed $100,000. The district director may mitigate or remit fines, penalties, or forfeitures incurred under section 592 when the total amount of those fines, penalties or forfeitures incurred thereunder does not exceed $25,000.

2. It is proposed to amend § 171.33, by revising paragraph (b)(1) to read as follows:

§ 171.33 Supplemental petitions for relief.

* * * * *

(b) *Consideration-(1) Decisions of the district director.* Where the district director has the authority to grant relief in accordance with the provisions of § 171.21 and 171.22, he may grant additional relief if he believes it is warranted. If there has been a specific request on the part of the petitioner for review by the regional commissioner or Commissioner of Customs, or if the district director believes no additional relief is warranted, or if the petitioner is not satisfied with the additional relief granted by the district director, the supplemental petition, together with all pertinent documents, shall be forwarded to the regional commissioner of the region in which the district lies if the amount of the liability is $25,000 or less, or to the Commissioner of Customs if the amount of the liability is more than $25,000 but does not exceed $100,000, for reconsideration and disposition of the case, except as provided in § 171.22(c).

PART 172—LIQUIDATED DAMAGES

1. It is proposed to revise § 172.21 to read as follows:

§ 172.21 Petitions acted on by district director of Customs.

The district director may cancel any claim for liquidated damages incurred on such terms and conditions as, under the law and in view of the circumstances, he shall deem appropriate when the claim is $100,000 or less.

2. It is proposed to revise § 172.33(b)(1) to read as follows:

§ 172.33 Supplemental petitions for relief.

* * * * *

(b) *Consideration-(1) Decisions of the district director.* Where the district director has authority to grant relief in accordance with the provisions of § 172.21 and 172.22, he may grant additional relief if he believes it is warranted. If there has been a specific request on the part of the petitioner for review by the regional commissioner or Commissioner of Customs, or if the district director believes that no additional relief is warranted, or if the petitioner is not satisfied with the additional relief granted by the district director, the supplemental petition, together with all pertinent documents, shall be forwarded to the regional commissioner of the region in which the district lies if the amount of the liability is $50,000 or less, or to the Commissioner of Customs if the amount of the liability is more than $50,000 but does not exceed $100,000, for reconsideration and disposition of the case, except as provided in § 172.22(d)(3).

* * * * *

William von Raab,
Commissioner of Customs.

Approved: July 2, 1984.

Edward T. Stevenson,
Acting Assistant Secretary of the Treasury.

[FR Doc. 84-18865 Filed 7-16-84; 8:45 am]
BILLING CODE 4820-02-M

19 CFR Part 175

Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Continuously Cast Iron Bars

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of receipt of domestic interested party petition.

SUMMARY: Customs has received a petition submitted on behalf of a domestic interested party with respect to the tariff classification of continuously cast iron bars. The petitioner contends that the merchandise is currently incorrectly classified under a duty-free provision of the Tariff Schedules of the United States (TSUS), and should be reclassified under a provision of the TSUS which carriers a duty rate of 5.1 percent ad valorem. This document invites comments with respect to the correctness of the current classification of the imported merchandise.

DATE: Comments must be received on or before September 17, 1984.

ADDRESS: Comments (preferably in triplicate) may be submitted to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8237).

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

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), a domestic interested party petition has been filed with respect to the tariff classification of imported continuously cast iron bars.

The described merchandise is currently classified under the provision for "Cast-iron articles, not alloyed: [n]ot malleable", in item 657.09, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), at a column 1 duty-free rate. The petitioner contends that the merchandise is properly classifed under the provision for "Ingots, blooms, billets, slabs, and sheet bars, all the foregoing of iron or steel: [o]ther than alloy iron or steel", in item 606.67, TSUS, at a column 1 duty rate of 5.1 percent ad valorem.

The petitioner questions whether iron products which are made by a continuous casting method and which meet the dimensional requirements for blooms or billets may be regarded as semifinished articles.

Comments

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties on the classification and appraisement issues.

The domestic interested party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 and 4:30 p.m. on normal business days, at the Regulations Control Branch, Headquarters, U.S. Customs Service, Room 2426, Washington, D.C. 20229.

Authority

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

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

William von Raab,
Commissioner of Customs.

Approved: July 2, 1984.

Edward T. Stevenson,
Acting Assistance Secretary of the Treasury.

[FR Doc. 84-18863 Filed 7-16-84; 8:45 am]
BILLING CODE 4820-02-M

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19 CFR Part 177

Proposed Change of Practice Concerning Tariff Classification of Imported Gloves With Nonfunctional, Nondecorative Stitching

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed change of practice and request for comments.

SUMMARY: This document gives notice that Customs is reviewing its current established and uniform practice concerning the tariff classification of gloves with nonfunctional, nondecorative "X" stitching. The merchandise is currently classified under the provision for ornamented gloves, of textile materials. However, because the stitching is not readily visible on the article, Customs is considering classifying the gloves under the provisions for gloves, not ornamented, of textile materials. Public comments are invited regarding this proposed change of practice.

DATE: Comments (preferably in triplicate) must be received on or before September 17, 1984.

ADDRESS: Comments should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue NW., Washington, D.C. 20229.

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

SUPPLEMENTARY INFORMATION:

Background

Customs is reviewing its current established and uniform pracice of classifying gloves with nonfunctional, nondecorative "X" stitching. These gloves are currently classified under the provisions for ornamented gloves, of textile materials, in terms 704.05-704.34, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202). Customs is considering classifying this merchandise under the provisions for gloves, not ornamented, of textile materials, in items 704.40-704.95, TSUS, which would result in a higher rate of duty for most importations of the merchandise. In some instances, the rate of duty might be lowered, which would be of interest to the domestic industry.

Customs previously ruled on July 16, 1974 (file no. 934642), that certain gloves with a double X embroidered design with yarn of the same color as the gloves were ornamented for tariff purposes. That ruling is the apparent basis for the existing practice that gloves with certain "X" stitching, which are the subject of this proposal, are classifiable as ornamented. Whether nonfunctional, nondecorative "X" stitching on the back of the gloves constitutes ornamentation is the sole issue involved. Both the Customs National Import Specialist in New York and the Customs classifying officer in Washington, D.C., agree that such stitching is seldom readily visible. In fact, on some gloves the stitching can only be seen with a magnifying glass.

In order for a feature, such as stitching, enumerated in Headnote 3, Schedule 3, TSUS, to constitute ornamentation, that feature must increase the eye appeal of the article, by making it more attractive, or by adding something which serves a primarily decorative rather than useful function. *Colonial Corp. of America* v. *United States*, 62 Cust. Ct. 502, C.D. 3815 (1969). The term "ornamented", as defined in Headnote 3, does not embrace all the features listed in Headnote 3 (fibers, filaments, and yarns introduced as needlework or otherwise), but only those which primarily serve to adorn, embellish, decorate, or enhance that article. *Blairmoor Knitwear Corp.* v. *United States*, 60 Cust. Ct. 388, C.D. 3396 (1968).

Stitching which is not readily visible on an article, and particularly stitching which only can be seen with a magnifying glass, cannot be said to either increase the eye appeal of that article, or to adorn, embellish, decorate, or enhance the appearance of that article. *Endicott Johnson Corp.* v. *United States*, 82 Cust. Ct. 49, C.D. 4787 (1979), affirmed 67 CCPA 47, C.A.D. 1242 (1980). Accordingly, such stitching on the gloves in question should not cause those gloves to be classified under the ornamented provisions in the tariff schedules. Customs has ruled, in decisions dated August 30, 1979 (file no. 055437), and September 12, 1979 (file no. 061439), that stitching which was barely

visible did not constitute ornamentation for tariff purposes.

We see no conflict between this position and Customs Headquarters ruling of July 16, 1974 (file no. 034642), which, unfortunately, did not comment on the visibility of the stitching there involved. Stitching which is the same color as the fabric on which it is located can be readily visible and we have so ruled on a number of occasions. Accordingly, we interpret that ruling as being concerned with stitching which is readily visible.

Proposed Change of Practice

On the basis of the above information, Customs has determined that the established and uniform practice of classifying gloves with nonfunctional, nondecorative "X" stitching as ornamented, in items 704.05–704.34, TSUS, is clearly wrong. It is Customs position that such gloves should be classified as either ornamented or not ornamented based on the same criteria that are applied to all other textile articles: (1) The "X" stitching on the gloves must be decorative in appearance; (2) the primary purpose of that stitching must be the ornamental effect it imparts; and (3) the decorative appearance of the stitching must be more than merely incidental when viewing the gloves as a whole.

Authority

Because the proposed change of practice, if adopted, will increase the amount of duties assessed on the merchandise, and is of sufficient interest to the domestic industry, Customs is giving the public an opportunity for comment as provided by section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), and § 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Comments

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

Drafting Information

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

Alfred R. De Angelus,
Acting Commissioner of Customs.

Approved: July 2, 1984.

Edward T. Stevenson,
Acting Assistant Secretary of the Treasury.

[FR Doc. 84-18866 Filed 7-16-84; 8:45 am]
BILLING CODE 4820-02-M

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19 CFR Part 177

Proposed Change of Practice Regarding Tariff Classification of Imported Lace Curtain Material

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed change of practice and request for comments.

SUMMARY: Customs is reviewing its practice of classifying certain lace curtain material imported with one hemmed edge and without lines or patterns indicating where the fabric should be cut. The current practice is to classify the merchandise under the tariff provision for other lace or net articles, not specially provided for, whether or not ornamented. This classification is based upon a 1979 ruling which, it is now believed, may have been predicted upon erroneous information. It is proposed that such imported merchandise be classified under the appropriate provision for lace, in the piece or in motifs, whether or not ornamented. The current practice is being reviewed because it is now questioned whether the merchandise, as imported, is sufficiently dedicated to use as curtains. Further, hemmed curtain fabric is apparently known in the trade and commerce as material or fabric rather than as unfinished curtains.

Because our decision in this matter may have a substantial impact upon importers of the above-described merchandise, and be of interest to the domestic industry, public comments are being invited before any change is made.

DATE: Comments (preferably in triplicate) must be received on or before September 17, 1984.

ADDRESS: Comments should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20220 (202–566–8181).

SUPPLEMENTARY INFORMATION:

Background

Customs is reviewing its practice of classifying certain lace curtain material imported with one hemmed edge and without lines or patterns indicating where the fabric should be cut. This merchandise is currently classified under the provision of other lace or net articles, not specially provided for, whether or not ornamented, in item 386.13, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202).

This classification is based upon a Customs Service ruling dated May 25, 1979 (055443) in which it was stated that an established and uniform practice existed to classify curtain fabrics hemmed at one edge under the provisions for articles of textile materials, not specially provided for. Customs has reexamined this matter and determined that the information upon which that ruling was predicted, that being that an established and uniform practice of classification existed at that time with regard to hemmed curtain fabric, was erroneous. However, since the finding of a practice was made in a Customs ruling, irrespective of the correctness of the finding, Customs cannot now revoke that finding and change the classification of the merchandise to a different provision without compliance with section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), and § 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)), which specify the procedure for changing an established and uniform practice. *Rank Precision Industries, Inc.* v. *United States*, 660 F. 2d 476, 68 CCPA 78, C.A.D. 1269 (1981).

In its condition as imported, without cutting lines or other lines of demarcation which would allow the identification of the individual curtains to be made from the material, the subject merchandise is not classifiable as unfinished curtains. See General Headnote 10(h), TSUS; *The Harding Co.* v. *United States*, 23 CCPA 250, T.D. 48109 (1936); *United States* v. *M. H. Rogers, Inc.*, 18 CCPA 271, T.D. 44448 (1930); and *United States* v. *Buss & Co.*, 5 CT. Cust. Appls. 110, T.D. 34138 (1914). In addition, we do not believe the merchandise is sufficiently dedicated for use as curtains to preclude its classification as material. Hemmed curtain fabric is apparently known in the trade and commerce of this country as material or fabric rather than as unfinished curtains. The classification of the merchandise should reflect the commercial reality. Accordingly, it is proposed to change the classification of

this merchandise so that future importations would be classified under one of the provisions for lace, in the piece or in motifs, whether or not ornamented, in items 351.30 through 351.90, TSUS. The exact tariff classification and rate of duty would depend upon how the lace was made.

Authority

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

Comments

Before making a determination of this matter, Customs will consider any written comments timely submitted to the Commissioner of Customs.

Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:40 p.m. on normal business days, at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, D.C. 20229.

Drafting Information

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

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: July 2, 1984.

Edward T. Stevenson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84-18864 Filed 7-16-84; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Collection of Interest and Administrative Costs on Loan Guaranty Indebtedness

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The VA (Veterans Administration) is proposing to amend its regulations to provide additional notice of new procedures for the collection of interest and administrative costs from persons who become indebted to the United States as a result of their participation in the VA loan guaranty program. These amendments are designed to comply with the provisions of the Veterans' Rehabilitation and Education Amendments of 1980.

DATES: Comments must be received on or before August 9, 1984. It is proposed to make these amendments effective 30 days after publication as a final regulation or as soon thereafter as necessary program changes can be implemented.

ADDRESS: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until August 23, 1984. Persons visiting the VA Central Office in Washington, D.C., for the purpose of inspecting comments will be received by the Central Office Veterans Services Unit in room 132 of the above address. Visitors to VA field stations will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond L. Brodie, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420 (202) 389-3668.

SUPPLEMENTARY INFORMATION: Section 605(a) of Pub. L. 96-466, the Veterans' Rehabilitation and Education Amendments of 1980, provides that interest and administrative costs shall be charged, under regulations which the Administrator shall prescribe, on any amount owed to the United States. Interest and administrative expenses shall be charged, to the extent not precluded by the loan instruments concerned, for an indebtedness resulting from a person's participation in a program of loans, loan guaranties or loan insurance administered by the VA.

The law specifies that interest shall accrue from the day on which notice is mailed to the debtor's last known address, but that no interest shall be charged for any period before the effective date of this statutory provision (Oct. 1, 1980) or if the amount due is paid within a reasonable time, as prescribed by the Administrator.

Both the interest rate to be charged and the portion of the administrative costs of collection to be charged are to be determined by the Administrator, with the rate of interest based upon the rate of interest paid by the United States for its borrowing. The regulations which govern the collection of claims are set forth in 38 CFR 1.910 through 1.922. The formulas for computation of interest and the circumstances under which interest and administrative costs will be assessed are set forth in 38 CFR 1.919.

This proposed action will amend §§ 36.4285(d) and 36.4323(e) to provide additional notice to veterans and others who may become indebted to the United States through participation in the VA loan quaranty program of the new requirements.

It is also proposed to make minor editorial changes in § 36.4323 to effect agency policy of using precise terms in lieu of gender specific pronouns.

The Administrator has certified that these proposed regulations, if adopted, will not have a significant economic impact on any small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The proposed amendments will affect only individuals who have become indebted to the United States as a result of participation in the VA loan guaranty program. Small businesses, small organizations and small government jurisdictions will not be affected by these regulations. Pursuant to 5 U.S.C. 605(b), these regulations are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The proposed amendments have been reviewed pursuant to Executive Order 12291 and have been found to be nonmajor regulations. The proposed regulation changes will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic Assistance Program Numbers 64.114) and 64.119)

These amendments are proposed under authority granted to the Administrator by sections 210(c), 1803(c), 1819(g), and 3115 of Title 38, United States Code.

List of Subjects in 38 CFR Part 36

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

Approved: June 21, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

38 CFR Part 36, Loan Guaranty, is amended as follows:

§ 36.4284 [Amended]

1. In § 36.4284, paragraph (d) is amended by changing the words "theretofor made" to the words "of the indebtedness".

§ 36.4285 [Amended]

2. In § 36.4285, paragraph (d) is amended by adding the following sentence: "This debt shall bear interest at a rate or rates established pursuant to § 1.919 of this title, and may be increased by adding the administrative costs of collection to the principal amount of the debt, as also provided in § 1.919 ."; paragraph (e) is amended by changing the words "relieving him or her of" to the word "from", and by changing the phrase "after such investigation as the Administrator may deem appropriate" to "after such investigation as may be considered appropriate"; and paragraph (f) is amended by changing the words "the Administrator determines" to the words "it is determined".

§ 36.4322 [Amended]

3. Section 36.4322 is amended by changing the phrase "theretofore made" to "of the indebtedness".

§ 36.4323 [Amended]

4. In § 36.4323, paragraph (a) is amended by changing the word "his" to the word "the"; paragraph (b) is amended by changing the word "him" to the word "the holder"; paragraph (e) is amended by adding the following sentence: "This debt shall bear interest at a rate or rates established pursuant to § 1.919 of this title, and may be increased by adding the administrative costs of collection to the principle amount of the debt, as also provided in § 1.919."; paragraph (f) is amended by removing the words "by him"; by changing the words "relieving him of" to "from"; and by changing the phrase "as he may deem" to "as may be considered"; and, the introductory portion of paragraph (g) is amended by removing the words "by him" and by changing the phrase "if he determines that:" to "if it is determined that:"; and paragraph (g)(3) is amended by inserting "or she" following the word "he".

[FR Doc. 84-18834 Filed 7-16-84; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-5-FRL 2600-3]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Ohio

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to change the sulfur dioxide designation for Columbiana and portions of Summit County from nonattainment to attainment of the National Ambient Air Quality Standard (NAAQS). In addition, EPA is proposing to deny the State of Ohio's request for the redesignation of Clermont, Coshocton, Cuyahoga, Lake, Lorain, Morgan, and Washington Counties and portions of Summit County. EPA is taking no action at this time on Ohio's redesignation requests for Gallia, Lucas, and Jefferson Counties.

EPA's proposed action is in response to Ohio EPA's request to redesignate all areas currently classified is nonattainment for sulfur dioxide in Ohio to full attainment. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such change.

DATES: Comments on this revision must be received on or before August 16, 1984.

ADDRESSES: Copies of the redesignation request, 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

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

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), USEPA, Region V, 230 South Dearborn, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Act, the Administrator of EPA has promulgated the NAAQS attainment status for each area of every state. See 43 FR 8962 (Mar. 3, 1978) and 43 FR 45993 (Oct. 5, 1978). These area designations may be revised whenever the data warrant.

EPA's criteria for data that warrant redesignating an area are set out in a April 21, 1983 memo, "Section 107 Designation Policy Summary" from Sheldon Meyers, Director, Office of Air Quality Planning and Standards. Accordingly, SO_2 redesignations must be supported by:

(a) Ambient monitoring data showing no violations over the most recent consecutive eight quarters (or four quarters if actual, commensurate, enforceable, concurrent emission reductions have also occurred),

(b) A reference modeled attainment demonstration at the SIP allowable emission limitations, and

(c) Certification of compliance with the SIP limits based on the federally approved test methods.

On December 14, 1982, Ohio EPA requested EPA to redesignate all areas currently classified as nonattainment for SO_2 in Ohio to full attainment. This request was based on available ambient air quality data which have shown no violations since at least January 1980. Based upon the information supplied by Ohio EPA and information available at EPA, EPA's proposed action for each county currently designated as nonattainment for SO_2 is addressed below. More detailed documentation supporting EPA's action is available for review in the rulemaking docket on today's action.

Columbiana County

EPA is proposing to redesignate this county to full attainment in view of the permanent shut-down of the Ohio Edison East Palestine Power Plant, the only identified major source of the previous modeled violations. In view of this shutdown, the available modeling and 11 quarters of monitoring data show no violations of the SO_2 NAAQS.

Gallia, Lucas and Jefferson Counties

Although there are current modeling analyses that do not predict exceedances and 11 quarters of exceedance free SO_2 monitoring data for Gallia, Lucas and Jefferson Counties, EPA is proposing to take no action on the redesignation of these counties pending further revision of EPA's stack height regulations. In October 1983 the

United States Court of Appeals for the District of Columbia remanded portions of EPA's stack height regulations (40 CFR 51.1, 51.12 and 51.18 (1983)) to the Agency for reconsideration. *Sierra Club v. EPA*, 719 F.2d 436 (D.C. Cir. 1983). Industry intervenors subsequently filed a petition for a writ of certiorari with the United States Supreme Court asking the Court to review the D.C. Circuit's decision. The petition is still pending. Depending on the action of the Supreme Court, the current stack height regulations may be revised and previous modeling demonstrations may have to be revised consistent with the new stack height regulations. Since the modeling analyses reviewed in support of the redesignation requests for these counties were based, in part, on the recently remanded stack height regulations, EPA is taking no action on the redesignation request for these counties at this time in the event the modeling analyses must be revised.

Clermont, Coshocton, Cuyahoga, Lake, Lorain, Morgan, and Washington Counties

These counties cannot be redesignated to attainment due to the lack of current compliance data for several SO_2 sources. EPA had previously requested Ohio EPA to submit recent, representative stack test data (based upon testing conducted in accordance with the approved SIP compliance method) to establish the compliance status of these sources. In addition, there are problems related to the emission limitations and operating conditions for some sources that need to be resolved prior to any redesignation of these areas. (In some counties the resolution of the stack height regulations, as discussed above, will be necessary before EPA can redesignate these areas). Therefore, EPA is proposing to deny the State's request for the redesignation of these seven counties to attainment for SO_2.

Summit County

On November 23, 1983, EPA proposed to redesignate the Barberton area to attainment and to retain the current primary nonattainment designation for two other areas. Today's action does not address the Barberton area of Summit County.

EPA is proposing to redesignate areas in Summit County as follows.

Area #1

Entire area northwest of the following line—Route 80 east to Route 91, Route 91 north to the county line.

EPA is proposing to designate this area to attainment, since all available modeling and monitoring data show no violations of the SO_2 standard in this area. This data consists of 11 quarters of monitoring data.

Area #2

Area bounded by the following lines: *North*—Bath Road (48) east to Route 8, Route 8 north to Barlow Road, Barlow Road east to the county line, *East*—Summit/Portage County line, *South*—Interstate 76 to Route 93, Route 93 south to Route 619, Route 619 east to the county line, *West*—Summit/Medina County line.

Because the State has not met the third test in the Sheldon Meyers' memorandum referenced above, EPA is proposing to deny the State's request to redesignate this area until the State can certify compliance for all SO_2 sources.

Area #3

Remainder of the County, except for the Barberton area.

This area is currently designated as attainment, and EPA proposes no change in this designation.

All interested persons are invited to submit written comments on the proposed redesignations. Written comments received by the date specified above will be considered in determining whether EPA will approve the redesignations. 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

Air pollution control, National parks, Wilderness areas.

(Section 107(d) of the Act, as amended (42 U.S.C. 7407)

Dated: May 1, 1984.

Basil G. Constantelos,

Acting Regional Administrator.

[FR Doc. 84-18528 Filed 7-16-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-279-P]

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System; and Proposed Fiscal Year 1985 Rates

Correction

In FR Doc. 84-17699 beginning on page 27422 in the issue of Tuesday, July 3, 1984, make the following corrections:

1. On page 27424, first column, first paragraph preceded by a dash, line fifteen, "§ 405.471(c)(4)(ii)(A)" should read "§ 405.471(c)(4)(iii)(A)".

2. On page 27427, first column, the paragraph preceded by "4. Combine the labor-related . . .", the first equation should read "3 ÷ 225 = .013333 ÷ .13333".

3. On page 27428, third column, fourth complete paragraph, line twelve, "405.467(g)(1)" should read "§ 405.476(g)(1)".

4. On page 27429, first column, first complete paragraph, first line, "adjusted" should read "adjustment".

5. On the same page, first column, fifth complete paragraph, line twelve, "1.3" should read "1.03".

6. On page 27433, first paragraph, the last sentence should read "However, as a result of the budget neutrality and other adjustments, the proposed Federal payment rates as published would increase by 5.6 percent and the hospital-specific payment rates would increase from 6.0 to 6.5 percent depending on the starting date of the hospital's cost reporting period.

PART 405—[CORRECTED]

7. On page 27435, the first three amendments for Part 405 are repeated and therefore lines nine through forty-four in column one should be removed.

8. On page 27441, first column, paragraph b., line six, "being" should read "begin".

9. On page 27442, columns two and three, the table should read as follows:

REVISED WAGE INDEX FOR CERTAIN URBAN AREAS

Urban area	Wage index	Effective date
(Constituent Counties or County Equivalents): Fort Worth-Arlington, TX: Johnson, TX; Parker, TX; Tarrant, TX.	.9347	Feb. 9, 1984.
Lincoln, NE: Lancaster, NE	.8709	Feb. 9, 1984.

REVISED WAGE INDEX FOR CERTAIN URBAN AREAS—Continued

Urban area	Wage index	Effective date
Davenport-Rock Island-Moline, IA-IL: Scott, IA; Henry, IL; Rock Island, IL.	.9840	Mar. 23, 1984.
Grand Forks, ND: Grand Forks, ND.	.9893	Mar. 23, 1984.
Richmond-Petersburg, VA: Charles City Co., VA; Chesterfield, VA; Colonial Heights City, VA; Dinwiddie, VA; Goochland, VA; Hanover, VA; Henrico, VA; Hopewell City, VA; New Kent, VA; Petersburg City, VA; Powhatan, VA; Prince George, VA; Richmond City, VA.	.9299	Mar. 23, 1984.
Sacramento, CA: Eldorado, CA; Placer, CA; Sacramento, CA; Yolo, CA.	1.1454	Mar. 23, 1984.
West Palm Beach-Boca Raton-Delray Beach, FL: Palm Beach, FL.	1.0010	Mar. 23, 1984.

REVISED WAGE INDEX FOR CERTAIN RURAL AREAS

Rural area	Wage index	Effective date
Kentucky	.8162	Mar. 23, 1984.

10. On page 27443, third column, paragraph one, line four of the equation should read "110.4÷100=1.104".

11. On the same page, paragraph three, last line of the equation should read "104.25÷100=1.0425".

12. On page 27445, first column, paragraph designated as "a.", line ten, "period" should read "year".

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6611]

Proposed Flood Elevation Determinations; Georgia et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that each listed community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). The proposed base flood elevations will modify the base flood elevations shown on each community's presently effective Flood Insurance Rate Map.

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plan management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no requirement; of itself it has no economic impact.

Proposed base flood elevations along flood sources studied in detail are shown on the Preliminary Revised Flood Insurance Rate Map. Lessees and owners of real property are encouraged to review these maps and related materials.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
Georgia	City of Doraville, DeKalb County	Nancy Creek	Just upstream of Tilly Mill Road	*954	*957
			About 1,400 feet upstream of Tilly Mill Road	*957	*961
Maps available for inspectionat City Hall, 3725 Park Avenue, Doraville, GA.					
Send comments to Honorable Gene Lively, Mayor, City of Doraville, P.O. Box 47096, Doraville, GA 30362					
Montana	Missoula County (unincorporated areas).	Clark Fork	Upstream edge of of Schwartz Creek Road Crossing	(1)	*3,474
			Approximately 100 feet upstream of Rock Creek Road crossing.	(1)	*3,539
		Rock Creek	Upstream edge of first County Road crossing	(1)	*3,530

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at Planning and Zoning Department, 201 West Spruce, Missoula, MA 59802.					
Send comments to the Honorable Barbara Evans, 200 West Broadway, Missoula, MA 59802					
[1] Not previously determined.					
New Mexico	Belen, city, Valencia County	Shallow flooding from Belen Mesa Arroyos.	Annexed area between Bosque Drain and Garcia Ditch		*4,803
Maps available for inspection at the City Hall, 503 Becker Avenue, Belen, NM.					
Send comments to Honorable Bonnie Lopez, City Manager of Belen, 503 Becker Avenue, Belen, NM 87002.					
New York	Southold, town, Suffolk County	Long Island Sound	Shoreline from Southold/Riverhead corporate limits to Mattituck Point.	*14	*15
			Mattituck Creek south of Mill Road	*12	*11
			Areas near Sound View Avenue, near intersection with Mill Road.	*11	*10
			Old Cove Road at Hashamomuck Pond	*8	*10
			Inlet pond	*12	*11
		Fishers Island Sound	Shoreline of Fishers Island	*14	*13
			Intersection of Fox Avenue and Central Avenue at West Harbor.	*12	*11
			Mud Pond and Ice Pond	*12	*11
		Block Island Sound	Shoreline of Fishers Island	*14	*15
			Pond at Barleyfield Cove	*12	*11
			Elizabeth Field	*12	*11
		Gardiners Bay	Intersection of Main Road and State Parkway in Orient.	*11	*10
			A forested area, north of Main Road, 1,000 feet east of intersection of Narrow River Road.	*9	*8
			A forested area, west of Narrow River Road, 2,500 feet south of intersection with Main Road.	*9	*8
			Bay Avenue, between Main and King Streets	*10	*9
			A forested area beside Spring Pond	*9	*8
			Wiggins Court, near Gull Pond	*9	*8
			Sandy Beach Road, near the Village of Greenport, New York.	*10	*9
			Landing Lane, near the Village of Greenport, New York.	*9	*8
			Shoreline of Stirling Basin, near Manhasset Avenue	*10	*8
			A forested area between Main Road and Champlin Place, east of Bailey Avenue.	*9	*8
Maps available for inspection at the Town Hall, Main Road, Southold, NY.					
Send comments to Honorable Francis J. Murphy, Town Supervisor of Southold, Main Road, Southold, NY 11971.					
South Carolina	Unincorporated areas of Richland County.	Crane Creek	Just upstream of Interstate 20	*182	*177
			Just upstream of U.S. Route 215	*182	*179
			Approximately 1.7 miles upstream of U.S. Route 215	*190	*190
Maps available for inspection at the Richland County Judicial Center, County Administrator's Office, 1701 Main Street, Columbia, SC.					
Send comments to Honorable Richard L. Black, County Administrator, Richland County, P.O. Box 192, Columbia, SC 29202.					
West Virginia	Dunbar, city, Kanawha County	Tyler Creek	Upstream of Wilson Street	*533	*539
			Upstream of Rosalana Road	(1)	*539
Maps available for inspection at the City Hall, 12th Street, Dunbar, WV.					
Send comments to Honorable Frank B. Leone, Mayor of the City of Dunbar, P.O. Box 216, Dunbar, WV 25064					
[1] Zone C.					
West Virginia	Charleston, city, Kanawha County.	Elk River	Conrail (downstream)	*556	*555
			Upstream corporate limits	*559	*555
		Elk Twomile Creek	Upstream of Stack Street	(1)	*555
			Upstream of Airport Road	(1)	*609
			Upstream corporate limits	(1)	*637
		Twomile Creek	Upstream of 7th Avenue	(1)	*534
			At School Street	(1)	*534
			Scraggs Drive (upstream side)	(1)	*556
			Upstream corporate limits	(1)	*603
Maps available for inspection at the Planning Office, City Hall, Court and Virginia Streets, Charleston, WV					
Send comments to Honorable James E. Roark, Mayor of the City of Charleston, P.O. Box 2749, Charleston, WV 25333					
[1] Approximately A Zone.					
West Virginia	South Charleston, Kanawha County.	Davis Creek	Downstream of Chesapeake System	*533	*532
			Downstream of Kanawha Turnpike	*534	*532
			Upstream of Kanawha Turnpike	(1)	*532
			Approximately .5 mile upstream of Kanawha Turnpike at limit of flooding affecting community.	(1)	*532

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Hall, 4th Avenue and D Street, South Charleston, WV.					
Send comments to Honorable Richard Robb, Mayor of the City of South Charleston, 4th Avenue and D Street, South Charleston, WV 25303.					
[1] Approximately.					

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: July 5, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-18808 Filed 7-16-84; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6599]

Proposed Flood Elevation Determinations; Texas

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule; revision.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Corpus Christi, Nueces and San Patricio Counties, Texas.

Due to recent engineering analysis, this proposed rule would revise the proposed determinations of base (100-year) flood elevations published in 49 FR 19354 on May 7, 1984 and in the *Corpus Christi Caller-Times*, published on or about March 22, 1984 and March 29, 1984, and hence would supersede those previously published rules for the areas cited below.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 302 South Shoreline, Corpus Christi, Texas 78469.

Send comments to: the Mayor Luther Jones, Mr. Edward Martin, City Manager or Mr. Bill Hennings, Assistant City Manager, City Hall, P.O. Box 9277, Corpus Christi, Texas 78469

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the City of Corpus Christi, Texas, in accordance with section 110 on the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4 (a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualifed for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on exsisting buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirements; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, flood plains.

PART 67—[AMENDED]

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
Airport Drainage	Just upstream of Joe Mireur Road.	*34
Drainage Creek	Just downstream of Old Brownsville Road.	*29
	Approximately 400 feet upstream of Joe Mireur Road.	*35
Oso Bay Tributary No. 2.	Approximately 600 feet upstream of Rodd Road.	*12
Airport Drainage	Just upstream of Joe Mireur Road.	*34
Drainage Creek	Just downstream of Old Brownsville Road.	*29
	Approximately 400 feet upstream of Joe Mireur Road.	*35
Oso Bay Tributary No. 2.	Approximately 600 feet upstream of Rodd Road.	*12
Oso Bay Tributary No. 3.	Just upstream of Lexington Road.	*12
Oso Bay Tributary No. 6.	Approximately 160 feet above Acushnet Road.	*20
	Just downstream of U.S. Government Railroad.	*24
Oso Creek Tributary No. 10.	Just upstream of West Point Road.	*32
Oso Creek Tributary No. 14.	Just upstream of Texas Mexican Railroad.	*46

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
Navigation Boulevard Drainage Ditch.	Approximately 800 feet downstream of Old Brownsville Road.	*37
State Highway 44 East Drainage Ditch.	Just downstream of Hopkins Road.	*40
State Highway 44 West Drainage Ditch.	Approximately 1,650 feet downstream of Bronco Road.	*44
Oso Bay Tributary No. 3.	Just upstream of Lexington Road.	*12
Oso Bay Tributary No. 6.	Approximately 160 feet above Acushnet Road.	*20
	Just downstream of U.S. Government Railroad.	*24
Oso Creek Tributary No. 10.	Just upstream of West Point Road.	*32
Oso Creek Tributary No. 14.	Just upstream of Texas Mexican Railroad.	*46
Navigation Boulevard Drainage Ditch.	Approximately 800 feet downstream of old Brownsvile Road.	*37
State Highway 44 East Drainage Ditch.	Just downstream of Hopkins Road.	*40
State Highway 44 West Drainage Ditch.	Approximately 1,650 feet downstream of Bronco Road.	*44
Nueces River	Approximately 10,000 feet upstream of U.S. Highway 77.	*15
Gulf of Mexico	Along shoreline at Bob Hall Pier.	*11
	Along shoreline at Fish Pass	*11
Nueces Bay	Nueces River at Missouri Pacific Railroad crossing.	*14
	At intersection of Nueces Bay Boulevard and West Broadway.	*9
Laguna Madre	At intersection of Knickerbocker and Laguna Shores Boulevard.	*9
Nueces River	Approximately 10,000 feet upstream of U.S Highway 77.	*15
Gulf of Mexico	Along shoreline at Bob Hall Pier.	*11
	Along shoreline at Fish Pass	*11
Nueces Bay	Nueces River at Missouri Pacific Railroad crossing.	*14
	At intersection of Nueces Bay Boulevard and West Broadway.	*9
Laguna Madre	At intersection of Knickerbocker and Laguna Shores Boulevard.	*9
Corpus Christi Bay.	Along shoreline at seaplane ramps.	*13
	Along shoreline at seaside memorial cemetery.	*14
Redfish Bay	Along shoreline at a point 3,000 feet north of corpus Christi Channel.	*11
Oso Bay	Along east shoreline just west of U.S. Naval Air Station.	*14
Corpus Christi Bay.	Along shoreline at seaplane ramps.	*13
	Along shoreline at seaside memorial cemetery.	*14
Redfish Bay	Along shoreline at a point 3,000 feet north of Corpus Christi Channel.	*11
Oso Bay	Along east shoreline just west of U.S. Naval Air Station.	*14

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: July 5, 1984.

Jeffrey S. Bragg,

Federal Insurance Administrator, Federal Insurance Administration.

[FR Doc. 84-18612 Filed 7-16-84; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6604]

Proposed Flood Elevation Determinations; West Virginia

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 49 FR 23885 on June 8, 1984. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Town of Anawalt, McDowell County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Town of Anawalt, McDowell County, West Virginia, previously published at 49 FR 23885 on June 8, 1984, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

Under the Source of Flooding of Little Creek, the location description "Confluence with Tug Fork" should be added. The elevation at this point is 1,685 feet National Geodetic Vertical Datum.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: July 5, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-18609 Filed 7-16-84; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Ch. I

[CGD 80-136]

Maneuvering Performance Standards for U.S. Flag Vessels

AGENCY: Coast Guard, DOT.

ACTION: Supplemental advance notice of proposed rulemaking.

SUMMARY: In the Federal Register of September 14, 1981, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) which solicited the public's comments and suggestions on a proposal to develop ship maneuvering performance standards and regulations. The Coast Guard has decided to publish this supplemental advance notice of proposed rulemaking to solicit the public's comments and suggestions on a revised approach to the development of regulations related to ship maneuverability. The revised approach recognizes developments at the International Maritime Organization (IMO) and is responsive to the comments directed to the September 14, 1981 ANPRM. The revised approach will take into account the IMO plan to develop recommendations concerning (1) maneuvering guidelines for designers, (2) maneuvering data for the use of bridge officers and pilots, and (3) maneuvering performance standards.

DATE: Comments must be received on or before October 1, 1984.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/44) (CGD 80-136), U.S. Coast Guard, Washington, D.C. 20593. Comments may be delivered and will be available for inspection or copying from 7:00 am to 4:00 pm, Monday through Friday, except holidays, at the Marine Safety Council (G-CMC/44), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C., 202-426-1477.

FOR FURTHER INFORMATION CONTACT: Eugene Holler, Office of Merchant Marine Safety, 202-426-2197.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this proposal are Eugene Holler, Office of Merchant Marine Safety and Michael N. Mervin, Office of the Chief Counsel.

Background

In response to subsection (6)(A) of the Port and Tanker Safety Act of 1978 (now enacted as 46 U.S.C. 3703(a)(5)), the Coast Guard published an advance notice of proposed rulemaking (ANPRM) on September 14, 1981 (46 FR 45631). The purpose of that ANPRM was to solicit comments on a Coast Guard plan for developing ship maneuvering performance standards and regulations for the evaluation of the maneuvering and stopping characteristics of new vessels. Comments directed to the ANPRM suggested that performance standards and recommendations concerning ship maneuverability should first be developed at the international level. The Coast Guard delayed further rulemaking until efforts at the International Maritime Organization (IMO) could be assessed. The Coast Guard agrees that IMO recommendations for improvements in ship maneuvering and stopping ability should be considered before U.S. regulations are developed. The Coast Guard now proposes to consider IMO recommendations related to ship maneuverability as they are finalized by the IMO. Where appropriate, the principles of the IMO recommendations will be drafted into proposed regulations and published for comment as a notice of proposed rulemaking.

Discussion

The IMO Subcommittee on Ship Design and Equipment has identified a three part approach for developing recommendations related to ship maneuverability. First, the Subcommittee will develop guidelines for considering maneuvering performance in ship design. Then the Subcommittee, in cooperation with the Subcommittee on Safety of Navigation, will develop recommendations concerning the maneuvering information that should be provided to bridge officers and pilots. As data is developed, the Subcommittee will work toward developing maneuvering performance standards. The Subcommittee has stated, however, that more experience is needed with reliability of prediction methods and more data is needed before maneuvering performance standards suitable for different ship types can be agreed internationally.

The Coast Guard will consider the IMO recommendations when developing the United States maneuvering regulation required by 46 U.S.C. 3703(a)(5). As each part of the IMO work is completed, the Coast Guard will evaluate the resulting IMO recommendation. Where applicable, the principles of the IMO recommendation will be drafted into a proposed regulation and published for public comment as a notice of proposed rulemaking.

The purpose of this supplemental ANPRM is to inform the public that the Coast Guard does not intend to draft regulations without first considering the IMO recommendations on maneuverability. The public is invited to comment on this revised approach. Interested persons should submit such written views or arguments as they may desire. Each comment should include the name and address of the person submitting the comment, reference the docket number (CG 80-136) and include sufficient detail to indicate the basis on which each comment is made. Information that is proprietary should be identified as such in an accompanying letter. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard. No public hearing is planned at this stage. All comments received on or before the closing date for comments will be considered by the Coast Guard before taking further rulemaking action.

Information about the IMO work in this area may be helpful to those considering the revised approach proposed by the Coast Guard. Therefore, the recommendations forwarded to the IMO Maritime Safety Committee in April 1984 by the Subcommittee on Ship Design and Equipment are reproduced below for information. These "Interim Draft Guidelines" will be considered by the Maritime Safety Committee at its 50th session in November 1984. Comments on this IMO document are not being solicited by this ANPRM. However, anyone desiring to provide comments for consideration in the preparation of the United States position at IMO may do so through participation in the open U.S. Safety of Life at Sea (SOLAS) subcommittee working group meetings held for that purpose. Notice of the time, place and subject matter of the open SOLAS subcommittee working group meetings are published as Department of State Public Notices in the Federal Register.

Dated: July 11, 1984.

Clyde T. Lusk, Jr.,

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

Annex 2 to International Maritime Organization Document 27/10 (Dated 2 April, 1984)—Draft Interim Guidelines for Estimating Manoeuvring Performance in Ship Design

1. Introduction

All ships should have manoeuvring qualities which permit them to keep course, to turn, to check turns, to operate at acceptably slow speeds and to stop, all in a satisfactory manner. Since most manoeuvring qualities are inherent in the design of the hull and machinery they should be consciously estimated during the design process. These interim guidelines define specific manoeuvring characteristics which quantify manoeuvrability and recommend estimation of these characteristics during design both for the fully loaded and test condition in deep water. They also outline full scale tests to confirm the manoeuvring performance in the test condition. Manoeuvring performance of all new ships greater than 100 metres in length should be estimated using these guidelines. The Administration should decide to what extent the interim guidelines should apply to smaller ships. Although the guidelines are intended to apply to ships with rudders of conventional design, ships with unconventional steering arrangements should be included by the use of an equivalent control setting.

2. Description of Manoeuvring Characteristics

Manoeuvring capabilities of ships can be determined if the characteristics described below and in the Appendix are known.

2.1 Turning circle characteristics

Turning circle characteristics can be determined from the steady turning circle tests using a rudder angle of 35°, or a maximum design rudder angle permissible at the test speed. The essential characteristics are defined in figure 1 of the Appendix.

2.2 Yaw checking ability

Yaw checking ability can be determined by the first overshoot angle and time to check the yaw in a zig-zag manoeuvre. These parameters are defined in figure 2 of the Appendix. The rate of rudder movement has effects on this ability.

2.3 Initial turning ability

Initial turning ability can be determined from the change of a ship's heading angle per unit rudder angle and the distance travelled after a rudder command is executed, as described in the Appendix.

2.4 Course keeping ability

Course keeping ability is the capacity of the steered ship to correct for increasing heading errors before they become unacceptably large. While there is no simple index of this quality, it is closely related to the dynamic stability of the ship, as described in the Appendix and illustrated in figures 3, 4 and 5.

Consideration should be given to the neutral rudder angle necessary for proceeding on a straight course.

2.5 Slow steaming ability

The ability to proceed at steady slow speed can be determined from the ship's speed associated with the lowest possible engine revolutions per minute in calm weather conditions. This is only intended to address engine conditions and not steering control.

2.6 Stopping ability

Stopping ability can be determined from the distance a ship travels along its track once a crash astern order is given. This distance is defined as track reach in figure 6 of the Appendix.

3. Estimation and Comparison of Manoeuvring and Course Keeping Qualities

The manoeuvring qualities of a particular ship may be estimated by calculation, model testing or the use of a data base that contains ships of similar configuration, size and speed. These estimates can then be compared with the results of the turning circle, zig-zag and stopping tests.

The course keeping ability may be inferred by taking into account the size and speed of the ship together with the overshoot angle from the zig-zag test, the spiral loop width, or the residual rate of turn from the pull-out test.

4. Application

4.1 The Administration should recommend shipbuilders to use these guidelines during a ship's design process and also to indicate whether they have done so. Such indication should include information about the method used.

4.2 Tests should be conducted to compare the ship's actual manoeuvring performance with the designer's estimation. Where cirumstances permit, these tests should be carried out in deep water with favourable environmental conditions. The Appendix describes the types of tests that may be conducted, at least for the first ship of a particular design.

4.3 Upon completion of the ship's tests, the shipbuilder should examine the data with a view to establishing the validity of the prediction methods used for describing the ship's manoeuvring characteristics and submit the results to the Administration.

Appendix to Annex 2—Description of Standard Manoeuvres

Certain definitive manoeuvres have become established as "standard manoeuvres" to define the course keeping characteristics and manoeuvring capabilities of a ship. The description given here draws upon a number of codes available from different organizations, mainly the 1975 International Towing Tank Conference (ITTC) Manoeuvring Trial Code.

The definitive manoeuvres relate to such characteristics which are inherent in the design of the ship.

The test speed as used in these guidelines is defined as the speed at which a ship may be expected to navigate in areas where manoeuvres are normally required, and are not restricted by insufficient water depth or channel boundaries.

In the case of slow, full form ships this speed may be close to design sea speed. On the other hand for fast, fine form ships it may be a much lower proportion of design speed. The following formula is suggested as a guide to selecting test speed:

$V_V = C_B \times V_D$

where

V_T = test speed

V_D = design speed

C_B = block coefficient at the design draught.

This formula provides test speed values for bulk carriers and dry cargo/container ship types which are often used in general practice. Unless otherwise indicated tests shuld be commended at the test speed.

A ship is said to be "dynamically stable on a straight course" if, following a finite disturbance, it soon resumes its straight motion in a slightly different direction without any correcting rudder being applied. The magnitude of the change of direction is characteristic for the ship and for the magnitude of the disturbance.

If the ship is "dynamically unstable on a straight course" a finite disturbance, however small, will cause the ship if unsteered to enter a turn to one side or the other, ending up in a turning circle of a certain curvature, in which its motion is now stable with zero or "neutral" rudder. This curvature also defines the steady turning rate, which is equal to the height of the instability loop displayed in the steady-state turning-range versus rudder angle diagram derived from the spiral test (see 4.2 and 4.3).

Test Procedures

1 Turning circle tests

To be performed to both starboard and port with 35° rudder angle or the maximum design rudder angle permissible at the test speed.

The essential information to be obtained from this manoeuvre consists of tactical diameter, advance and transfer (see figure 1). Also of interest are the final ship speed and yaw rate in the "steady state" of the turning circle. A turning circle of at least 540° should be completed to determine the main parameters of the manoeuvre and allow correction for any drift caused by a steady current or wind.

At the completion of each of the turning circle tests a pull-out manoeuvre may be performed to provide information on the ship's dynamic stability.

The tactical diameter, advance and transfer may also be presented in nondimensional form by dividing their values by the ship's length between perpendiculars. The ratio of length over turning radius is a non-dimensional measure of the yaw rate.

2 Zig-zag tests

The standard type zig-zag tests are the $\delta=10°$ (ridder)/$\psi=10°$ (change of heading at rudder execute) and 20°/20° tests. "Modified" zig-zag tests, such as the 20°/10° test, are frequently performed in long towing basins in narrow waters and for reasons of special analysis.

At least one standard type zig-zag test should be performed at the test speed. The 10°/10° test is preferred, as it provides better discrimination between ship characteristics but the 20°/20° test should be included to provide a comparison with data available from earlier tests. For similar reasons of comparison the 20°/10° test may be taken into consideration.

The zig-zag test as shown in figure 2 is obtained by reversing the rudder alternately by δ degrees to either side at a deviation ψ from the initial course. After a steady approach with zero yaw rate the rudder is put over to starboard (first execute) and kept as steady as possible. When the heading is ψ degrees off the initial course, the rudder is reversed to the same position to port (second execute). After counter rudder

has been applied, the ship continues turning in the original direction with decreasing turning speed until the movement is decayed. Then, in response to the rudder the ship should turn to port. When the heading is ψ degrees of the course to port, the rudder is reversed again to starboard (third execute). This process may be continued until a total of 5 rudder executes have been completed, if required for other analysis. A pull-out test may also be performed upon completion of the zig-zag test.

The essential information to be obtained from the zig-zag tests are the initial turning time t_a (see section 3) to second execute, the time to check yaw, t_s, and the angle of overshoot α_s (see figure 2). In addition an analysis of the zig-zag test furnishes values of the steering indices K (gain constant) and T (time constant) associated with linearized steering theory.

3 Initial turning tests

The initial turning tests provide information on the transient heading condition between steady state approach and change of heading after application of the rudder. These tests should be performed with rudder angles of 10° and 20°. The time history of heading and yaw rate should be plotted. These tests may be combined with zig-zag tests (see section 2) and turning circle tests (see section 1).

4 Course keeping information tests

Information on course keeping characteristics can be obtained from the zig-zag tests, the pull-out tests and the direct and reversed spiral tests. For the zig-zag tests, see section 2 above.

4.1 The pull-out tests. The pull-out tests give a simple indication of a ship's dynamic stability on a straight course (see above). The ship is first made to turn with a certain rate of turn in either direction, upon which the rudder is returned to midship. If the ship is stable, the rate of turn will decay to zero for turns to both port and starboard. If the ship is unstable, then the rate of turn will reduce to some residual rate of turn. The pull-out test should be performed to both port and starboard to show a possible asymmetry (see figure 3). Normally, pull-out tests are performed in connection with the turning circle tests (see section 1), zig-zag tests (see section 2) or initial turning tests (see section 3), but they may be carried out separately.

4.2 The direct spiral test. The direct spiral test is an orderly sequence of turning circle tests to obtain a steady-turning-rate versus rudder angle relation (see figure 4).

In case there are reasons to expect the ship to be dynamically unstable, or only marginally stable, a direct spiral test will give additional information. This is a time consuming test to perform especially for large and slow ships. A significant amount of time is needed for the ship to obtain a steady rate of change of heading after each rudder angle change. Also the test is very sensitive to weather conditions.

With the ship on an initial straight course, the rudder is put to about 20° starboard and held until the rate of change of heading is constant. The rudder angle is then decreased by 5° and again held until steady conditions of turning have been obtained. This procedure is repeated until the rudder has covered the range from 20° on one side to 20° on the other side and back again. Over a range of rudder angles of 5° to 10° on either side of zero or neutral rudder angle these intervals should be reduced to 1°.

In cases where the ship is dynamically unstable it will appear that it is still turning steadily in the original direction although the rudder is now slightly deflected to the opposite side. At a certain stage the yaw rate will abruptly change to the other side and the yaw rate versus rudder angle relation will now be defined by a separate curve. Upon completion of the test the results will display the "hysteresis loop" presented in figure 4. Similar tests with a stable ship will result in a curve as shown in figure 5.

4.3 The reverse spiral test. The reverse spiral test may provide a more rapid procedure than the direct spiral test to define the instability loop as well as the unstable branch of the yaw rate versus rudder angle relationship indicated by the dotted curve as shown in figure 4. In the reverse spiral test the ship is steered at a constant rate of turn and the mean rudder angle required to produce this yaw rate is measured.

The necessary equipment is a properly calibrated rate of turn indicator and an accurate rudder angle indicator. Accuracy can be improved if continuous recording of rate of turn and rudder angle are available for the analysis. In certain cases the test may be performed with the automatic steering devices available on board.

If manual steering is used, the instantaneous rate of turn should be visually displayed to the helmsman, either on a recorder or on a rate of turn indicator.

Using the reverse spiral test technique, points on the curve of yaw rate versus rudder angle may be taken in any order.

The procedure for obtaining a point of the curve should be as follows:

The ship is made to approach the desired rate of turn, by applying a moderate rudder angle. As soon as the desired rate of turn is obtained, the rudder is actuated such as to maintain this rate of turn as precisely as possible, using progressively decreasing rudder motions until steady values of speed and rate of turn have been obtained. Steady rate of turn should usually be obtained fairly rapidly since rate-steering is easier to perform then normal compass steering.

This procedure should be repeated for a range of yaw rates, etc. until a complete yaw versus rudder angel relatioship is established, e.g. between 15° port to 15° starboard rudders.

The results of the spiral tests should be presented in accordance with the diagrams as shown in figures 4 or 5. The diagrams may be complemented by the appropriate fugures derived from pull-out and steady state turning circle tests. Again, the yaw rates may be given in non-dimensional form as indicated for the turning circle tests in section 1.

5 Stopping tests

Stopping tests should be performed from the test speed with maximum full astern power.

As indicated in figure 6, the ship's track and heading after the astern order should be plotted versus the time. Head reach and literal deviation may be presented in absolute values and also in non-dimensionalized form (in terms of the number of ship lengths). Moreover, the time lag between issuing the astern order and the moment the propeller stops and reverses (or when the pitch of controllable pitch propellers is reversed) should be measured.

Test Recording

1. Turning circles, initial turning test, pull-out, zig-zag test, crash stop and recorded versus time

—Revolutions per minute (RPM) of the propeller and the pitch setting
—Rudder angle
—Successive positions of the ship (not compulsory for pull-out)
—Ship speed
—Heading and rate of change of heading, i.e. yaw rate

2. Direct and reverse spiral tests

—Rudder angle
—Ship speed
—Rate of turn

3. Additional information included in the test protocol

Besides information on the ship conditions, viz:
—Draught and trim

—Displacement
—Test speed and corresponding number of revolutions (RPM) the following environmental conditions should be noted:
—Depth of water
—Sea state and swell
—Wind direction and speed
—Current direction and speed
—Initial course, relative to wind direction.

General Remarks

All manoeuvring tests should preferably be performed at a wind force not exceeding Beaufort No. 4 (depending on ship speed and characteristics) in deep water and with other environmental conditions acceptable for the test being performed.

For all the tests, measurements should be commenced during the approach period, two or three minutes before the first execute.

BILLING CODE 4910-14—

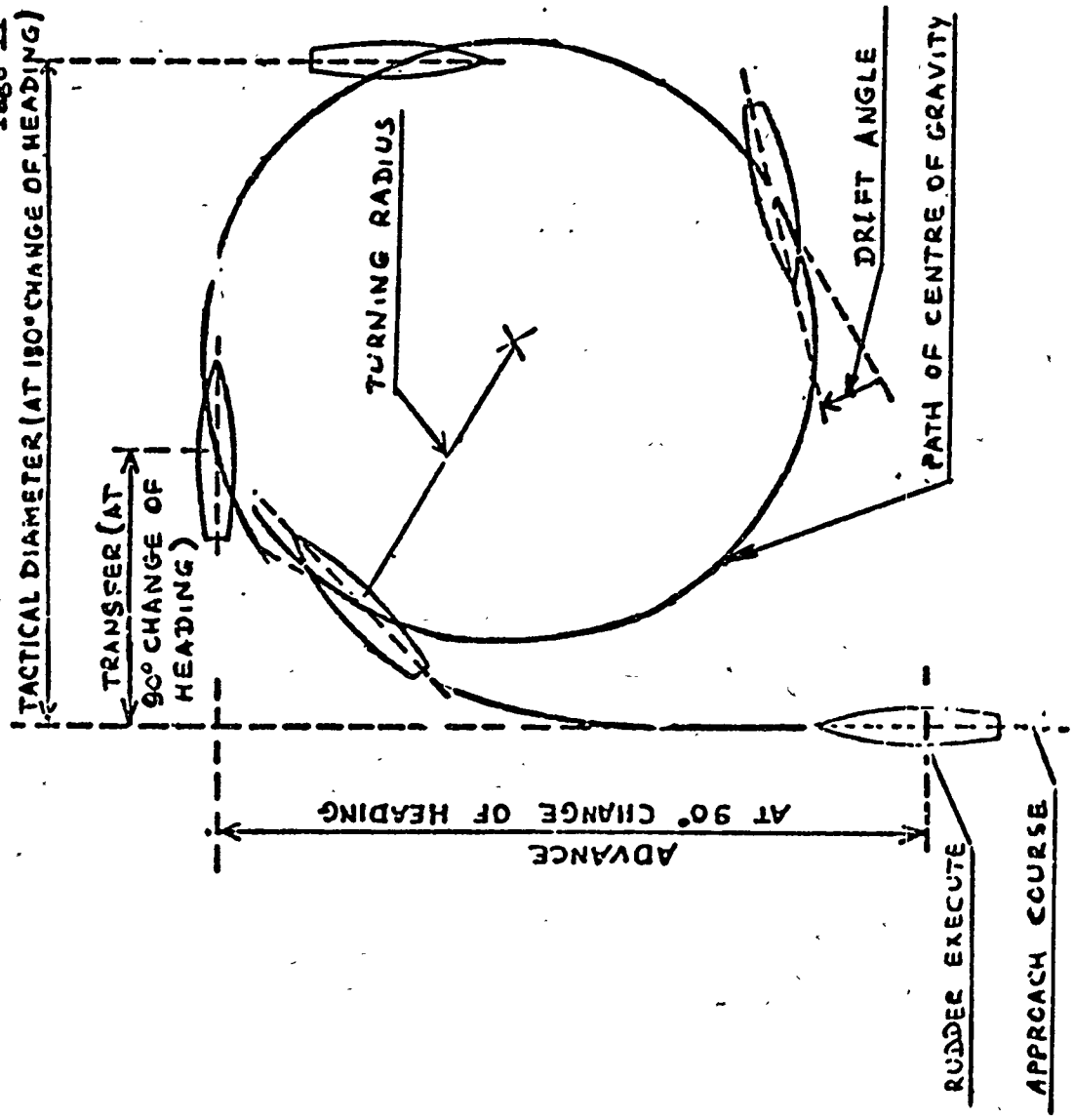

Fig.1 - Definitions used on turning circle tests

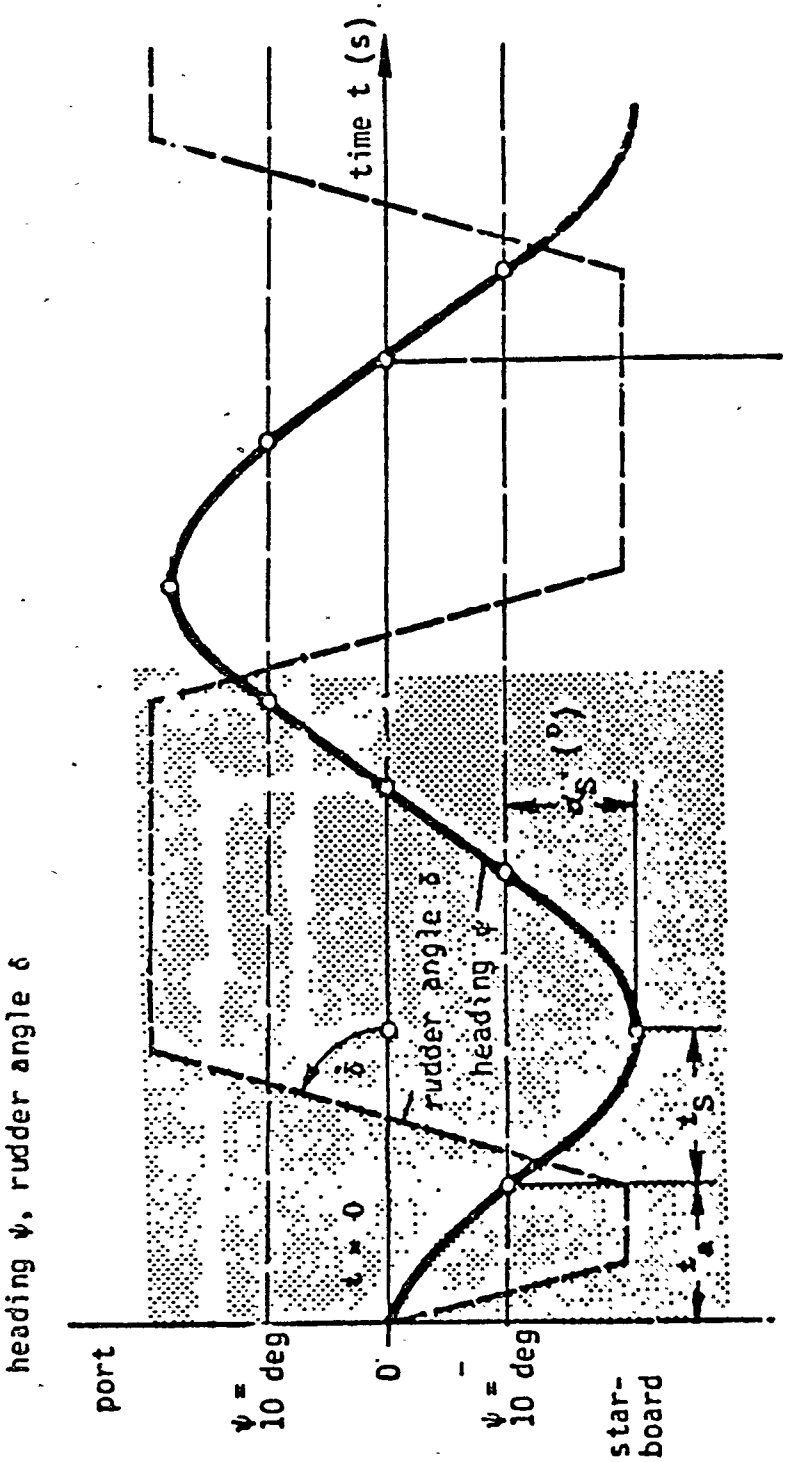

Fig.2 - Most important part of zig-zag test (example of $20^0/10^0$ zig-zag test)

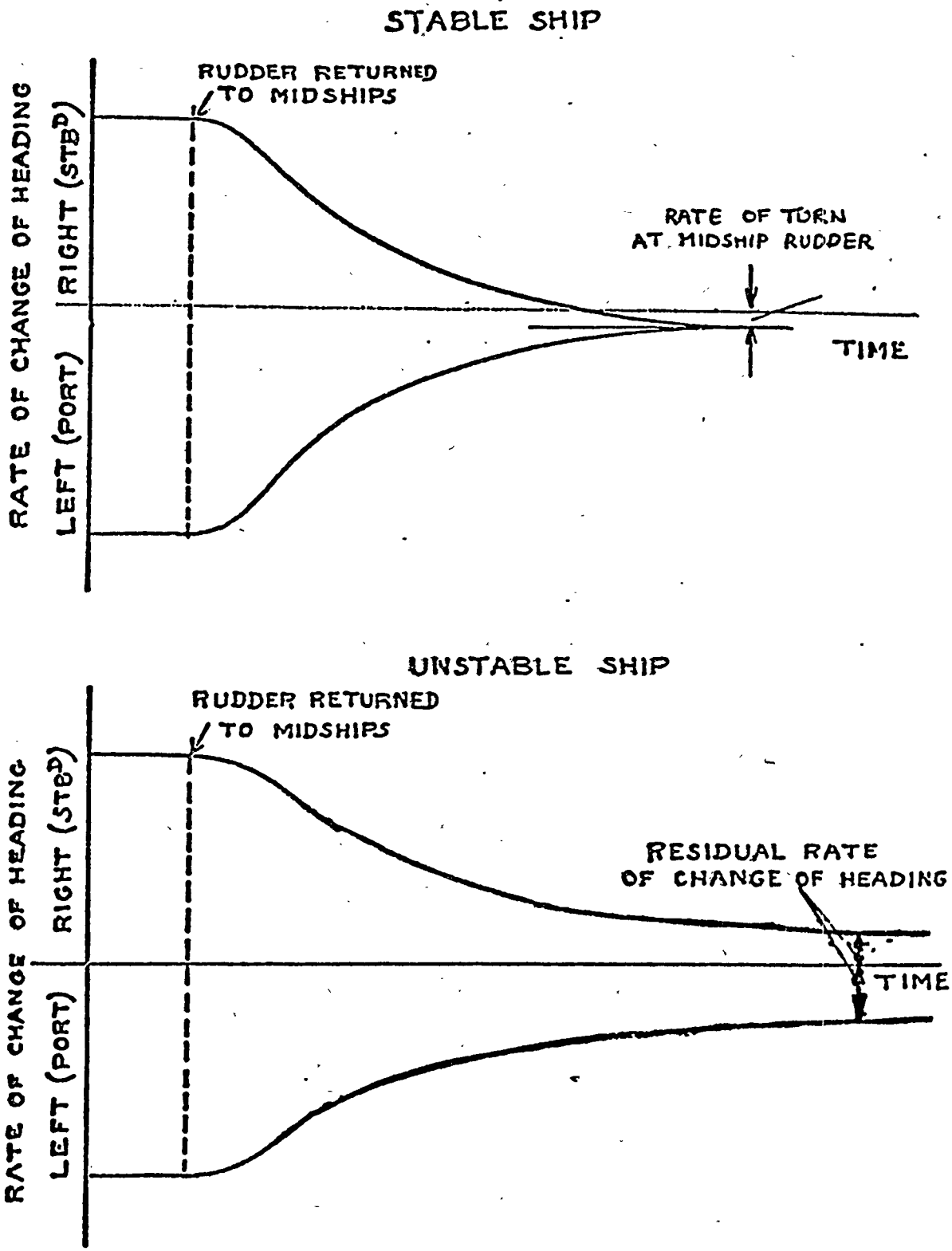

Fig.3 - Presentation of pull-out tests results

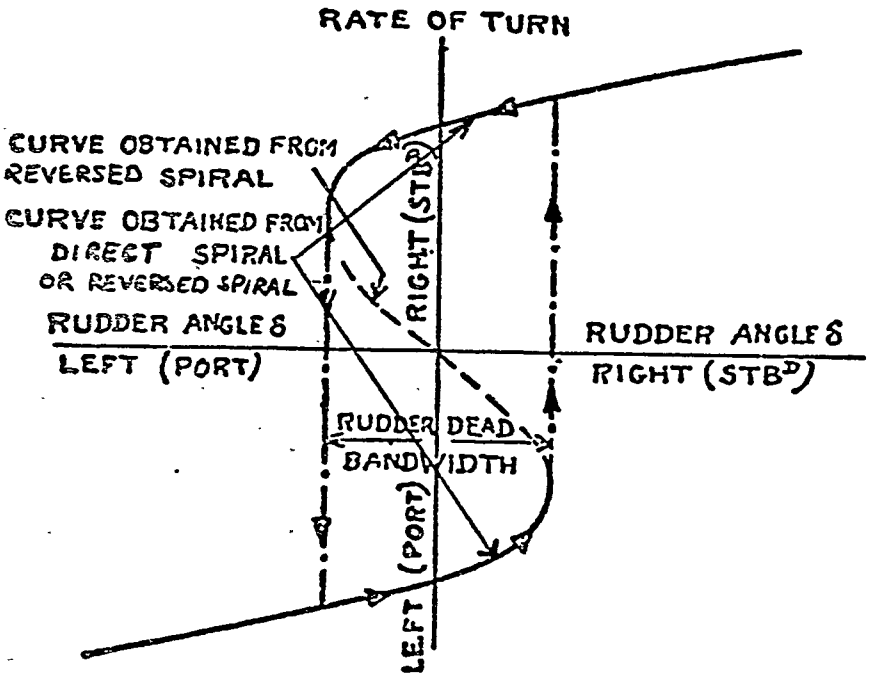

Fig. 4 - Presentation of spiral tests results for unstable ship

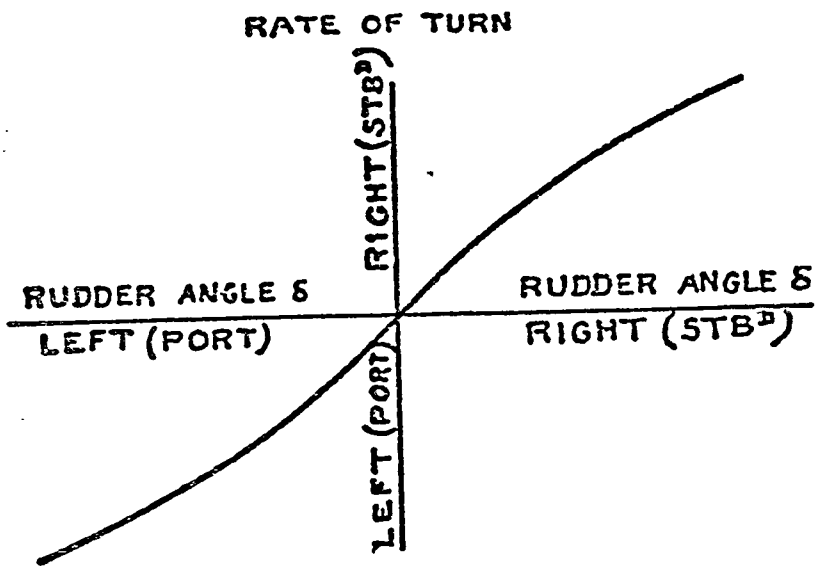

Fig. 5 - Presentation of spiral tests results for stable ship

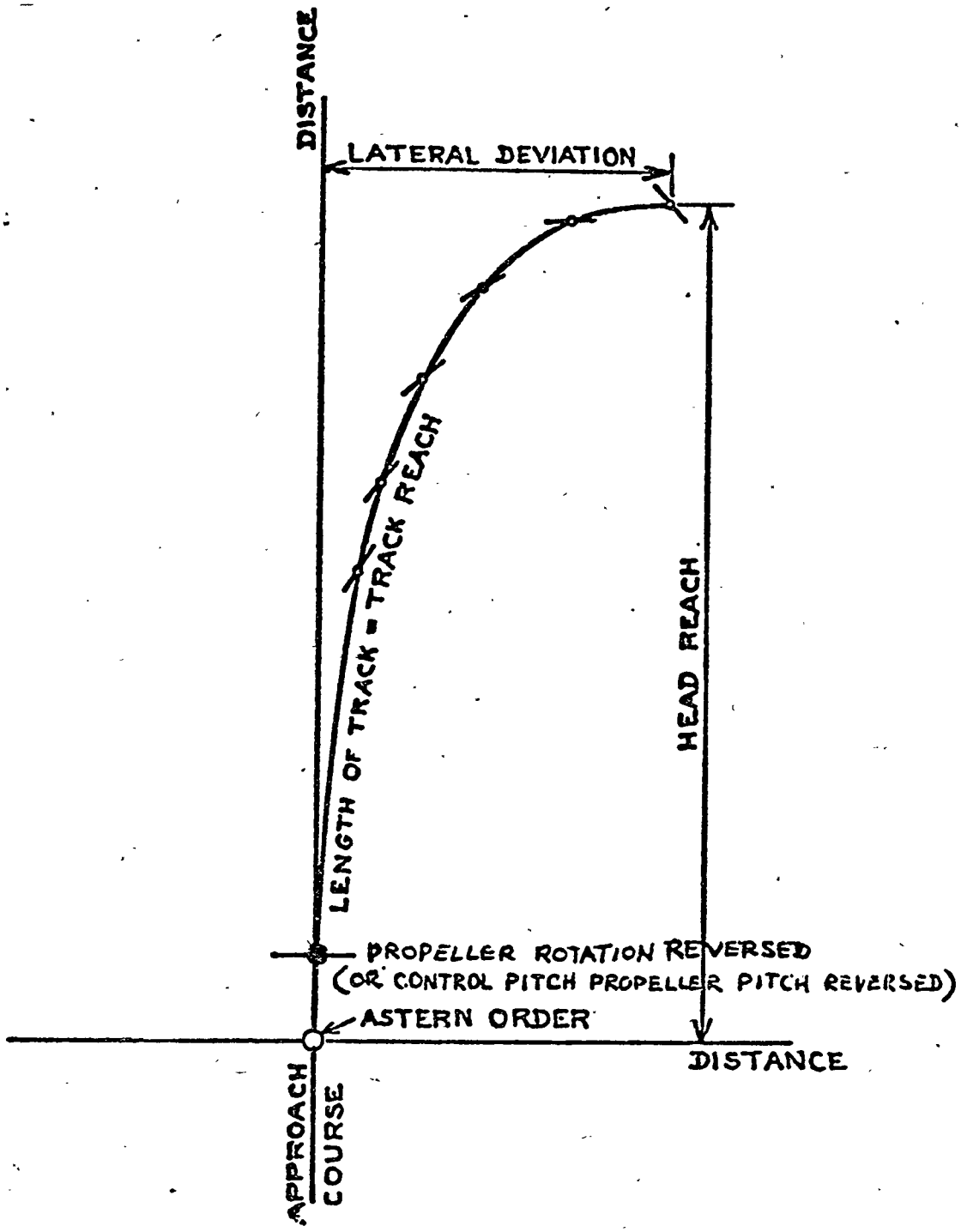

Fig. 6 – Definitions used in stopping tests

[FR Doc. 84-18730 Filed 7-16-84; 8:45 am]
BILLING CODE 4910-14-C

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Notices

Federal Register
Vol. 49, No. 138
Tuesday, July 17, 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.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Finding of No Significant Impact; Hacklebarney Watershed, IA

AGENCY: Soil Conservation Service, USDA.

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 Hacklebarney Watershed, Montgomery and Adams Counties, Iowa.

FOR FURTHER INFORMATION CONTACT: J. Michael Nethery, State Conservationist, Soil Conservation Service, 693 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309, telephone 515-284-4260.

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, J. Michael Nethery, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for land treatment measures. The planned works of improvement include terraces and water and sediment control basins, grade stabilization structures, conservation tillage systems and contour farming.

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 J. Michael Nethery.

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. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-95 regarding State and Local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: July 10, 1984.

J. Michael Nethery,
State Conservationist.

[FR Doc. 84-18822 Filed 7-16-84; 8:45 am]
BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Franchise Opportunities Handbook
Form No.: Agency—ITA 908; OMB—0608-0048
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 200 respondents; 100 reporting hours
Needs and Uses: Information is used by the International Trade Administration to identify franchisors to participate in trade missions, trade center presentations, and catalog shows. It is also used by the Minority Business Development Agency and the Small Business Administration to identify minority and small business opportunities.
Affected Public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: Annually
Respondent's Obligation: Voluntary
OMB Desk Officer: Sherri Fox 395-7231.

Agency: National Oceanic and Atmospheric Administration
Title: Federal Fisheries Permit (Amendment B)
Form No.: Agency—NOAA 88-155 and 88-156; OMB—0648-0097
Type of Request: Revision of a currently approved collection
Burden: 10,318 respondents; 5,245 reporting hours
Needs and Uses: Application provides information for issuance of permits. The permit is used to enumerate the number of participants and monitor the level of fishing activities. Amendment B adds bluefish to the Northeast Region's permit system.
Affected Public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: Annually
Respondent's Obligation: Required to otain or retain a benefit
OMB Desk Officer: Sherri Fox 395-7231.

Agency: National Oceanic and Atmospheric Administration
Title: Fisheries Loan Fund
Form No.: Agency—N/A; OMB—0648-0133
Type of Request: Reinstatement (Expedited Clearance Requested)
Burden: 200 respondents: 2,200 reporting hours
Needs and Uses: This collection is used to determine eligibility of vessels applying for monies under the Fisheries Loan Fund Program. Reinstatement is needed because the number of applicants were fewer than needed to meet Congressionally mandated goals for this program during the term of OMB's approval.
Affected Public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sherri Fox 395-7231.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230. Written comments and recomendations for the proposed information collecions should be sent ot the OMB Desk Officer, Room

3235, New Executive Office Building, Washington, D.C. 20203.

Dated: July 11, 1984.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 84-18873 Filed 7-16-84; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Publication of NVLAP quarterly report (April 1–June 30, 1984).

SUMMARY: The National Bureau of Standards (NBS) announces laboratory accreditation actions for the second quarter of 1984. The status of all NVLAP laboratory accreditation programs (LAPs) is summarized.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Locke, Manager, Laboratory Accreditation, TECH B141, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-3431.

SUPPLEMENTARY INFORMATION: This report has been prepared in accordance with §§ 7a.17(a), 7b.17(a), 7c.17(a) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (15 CFR 7a.17(a), 7b.17(a), and 7c.17(a)).

New Accreditations Granted

Jim Walter Research Corporation, St. Petersburg, Florida has been accredited for ASTM test methods E90 and C384 in addition to those test methods for which it is already accredited under the Acoustical Testing Services LAP.

Renewed Accreditations

The following laboratories were reaccredited during the second quarter of 1984 for one or more test methods available under NVLAP. The reaccreditation of each laboratory is for a period of one year effective July 1, 1984. Each laboratory received a certificate of accreditation and a correspondening list of test methods for which each is accredited. Anyone wishing to know the test methods for which each of the named laboratories has been reaccredited should request the listing from the laboratory directly or from Mr. Locke at the address given above. Note that laboratories may change the test methods for which they are accredited from year to year, so the user should secure the current list of accredited test methods.

Insulation LAP

United States Gypsum Company, Libertyville, Illinois

Wiss Janney, Elstner and Associates, Inc., Northbrook, Illinois

Concrete LAP

A & H/Flood Engineering, Hillside, Illinois

West Virginia Department of Highways, Materials Control, Soil & Testing, Charleston, West Virginia

Carpet LAP

Salem Carpet Laboratory, Chatswood, Georgia

Voluntary Terminations

The following laboratory voluntarily terminated its accreditation during the second quarter of 1984.

Concrete LAP

Arizona Sand and Rock Company, Phoenix, Arizona

Status of Existing LAPs

Insulation LAP—The LAP for thermal insulation materials has 62, test methods for which accreditation may be granted; 34 laboratories are currently accredited to perform one or more of these test methods.

Concrete LAP—The LAP for freshly mixed field concrete has two groups of test methods and one optional test method for which accreditation can be granted; 38 laboratories are currently accredited under the Concrete LAP.

Carpet LAP—The LAP for carpet has 12 test methods for which accreditation may be granted; 23 laboratories are currently accredited for one or more of these test methods.

Stove LAP—The LAP for solid fuel room heaters has 20 test methods for which accreditation may be granted; 10 laboratories are currently accredited under the Stove LAP.

Acoustics LAP—The LAP for acoustical testing services has 50 test methods for which accreditations may be granted; seven laboratories are currently accredited under the Acoustics LAP.

Dosimetry LAP—The LAP for personnel dosimetry processors has eight radiation test categories for which accreditation may be granted; 27 processors have applied for accreditation in one or more of these categories. Applicants will participate in proficiency testing and receive on-site assessments in 1984, before accreditation decisions are made.

Commercial Products LAP—The LAP for commercial products testing has 127 test methods for paint coatings and related products, 54 test methods for paper and related products, and 6 test methods for mattresses for which accreditation may be granted. Two laboratories have applied for accreditation of test methods for paint coatings and related products. Applicants will receive on-site assessments in 1984, before accreditation decisions are made.

LAPS Under Development

Pressure Calibration Services LAP—A workshop was held at NBS on May 16, 1984, to develop technical requirements for this LAP. An announcement of availability of this LAP is anticipated by October 1, 1984.

Photographic Film LAP—A workshop was held at the Association for Information and Image Management (AIIM) Headquarters in Silver Spring, Maryland on June 22, 1984, to discuss technical requirements and critical elements for accreditation. An announcement of availability of this LAP is anticipated before October 1, 1984.

Activated Carbon LAP—ASTM Committee D 28 met on June 19 and 20, 1984, and agreed to suspend activity on this LAP pending a report on the status of the test method which is to form the basis of the LAP.

Dated: July 11, 1984.

Ernest Ambler,

Director, National Bureau of Standards.

[FR Doc. 84-18837 Filed 7-16-84; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Pacific Coast Groundfish Fishery; Experimental Fishing Permit Application

Correction

On July 11, 1984 at 49 FR 28283, the National Oceanic and Atmospheric Administration published a document concerning the Pacific Coast Groundfish Fishery (FR Doc. 84-18347) in the Proposed Rules section of the Federal Register. It should have appeared in the Notices section.

BILLING CODE 1505-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Import Limit for Certain Cotton Apparel Products Produced or Manufactured in Malaysia

July 12, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 18, 1984. For further information contact Diana Bass, International Trade Specialist, (202) 377-4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 5, 1980 and February 27, as amended, the Governments of the United States and Malaysia have agreed to establish a specific limit of 157,560 dozen for women's, girls' and infants' woven blouses in Category 341, produced or manufactured in Malaysia and exported during the period which began on April 27, 1984 and extends through December 31, 1984. Flexibility is available according to the terms of the agreement; however, because the agreement expires on December 31, 1984, no carryforward will be available during the restraint period established herein.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397) and June 28, 1984 (49 FR 26622).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

July 12, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of July 7, 1983 and December 9, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption and withdrawal from warehouse for consumption of certain cotton, wool and man-made fiber textile products, produced or manufactured in Malaysia and exported during 1984.

Effective on July 18, 1984, the directives of July 7, 1983 and December 9, 1983 are hereby amended to include a restraint limit of 157,560 dozen [1] for cotton textile products in Category 341, exported during the period which began on April 27, 1984 and extends through December 31, 1984.

In carrying out this directive, entries of textile products in Category 341 which have been exported on and after April 27, 1983 and extending through April 26, 1984, shall, to the extent of any unfilled balance, be charged to the limit established for them during that period. In the event that restraint limit has been exhausted by previous entries, such goods shall be subject to the level set forth in this letter.

The action taken with respect to the Government of Malaysia and with respect to imports of cotton textile products from Malaysia has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-18875 Filed 7-16-84; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after April 26, 1984.

Requesting Public Comment on Bilateral Textile Consultations With the Government of Hong Kong To Review Trade in Category 605pt.

July 12, 1984.

On June 27, 1984 the Government of the United States requested consultations with the Government of Hong Kong with respect to Category 605pt (man-made fiber thread in TSUSA number 310.9140). This request was made on the basis of the agreement of June 23, 1982, as amended, between the Governments of the United States and Hong Kong relating to trade in cotton, wool and man-made fiber textiles and textile products.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, the Committee for the Implementation of Textile Agreements may request the Government of Hong Kong to limit exported in Category 605pt. (TSUSA number 310.9140) produced or manufactured in Hong Kong and exported to the United States during 1984. The Government of the United States reserves the right to control imports in this category at the established limit.

Anyone wishing to comment or provide data or information regarding the treatment of this category under the bilateral agreement, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in this category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, committee for the implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-18874 Filed 7-16-84; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1984; Additions

Correction

In FR Doc. 84-18083 beginning on page 27968 in the issue of Monday, July 9, 1984, make the following correction on page 27969: In the first column, the entry under Class 7530 should read "Folder, File: 7530-00-811-7169".

BILLING CODE 1505-01-M

COMMODITY FUTURES TRADING COMMISSION

Joint Audit Plan

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for comment.

SUMMARY: Each self-regulatory organization must adopt, and submit for approval by the Commodity Futures Trading Commission ("Commission"), rules prescribing minimum financial and related reporting requirements for its member futures commission merchants ("FCMs"), and conduct audits of its member FCMs for compliance with such rules. Each self-regulatory organization must also establish procedures for and conduct sales practice audits of member FCMs which engage in the offer and sale of exchange-traded options under the Commission's pilot program, as well as review promotional material used by FCMs in connection with such activity. Section 1.52(c) of the Commission's regulations provides that any two or more self-regulatory organizations may file with the Commission a plan for delegating to a "designated" self-regulatory organization ("DSRO") those responsibilities for any FCM which is a member of more than one such self-regulatory organization.

The Commission has approved previously joint audit plans covering all of the contract markets and the National Futures Association ("NFA"), a futures association registered under section 17 of the commodity Exchange Act, as amended ("Act") and a self-regulatory ogranization under the Commission's regulations. However, not all of the self-regulatory organizations are parties to the same plan, so many FCMs have more than one DSRO. A new joint audit plan has now been submitted to which all of the self-regulatory organizations are parties, and which will result in each FCM having only one DSRO. The Commission is publishing this notice to request comment, in accordance with § 1.52(g) of the regulations, on the new joint audit plan.

DATE: comments must be received on or before August 16, 1984.

ADDRESS: Comments should be sent to: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: Paul H. Bjarnason, Jr., Chief Accountant, or Lawrence B. Patent, Special Counsel, Division of Trading and Markets, at the above address. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: On April 23, 1980, the Commission approved, pursuant to § 1.52(g) of the regulations, the joint audit plan submitted by seven contract markets, the Amex Commodities Exchange, Inc., Chicago Mercantile Exchange, Commodity Exchange, Inc., MidAmerica Commodity Exchange, Coffee, Sugar & Cocoa Exchange, Inc., New York Cotton Exchange and New York Mercantile Exchange.[1] On May 28, 1982, the Commission approved revisions to that plan which: (1) Amended the plan's requirements for conducting audits to conform with Interpretation No. 4 of the Commission's Division of Trading and Markets or with guidelines to be developed by the Joint Audit Committee, and (2) amended the plan's membership to include the New York Futures Exchange, Inc. and to delete the Amex Commodities Exchange, Inc.[2].

The Commission has approved three other DSRO plans: one involving the Board of Trade of the City of Chicago, the Board of Trade of Kansas City, Missouri, Inc., the Minneapolis Grain Exchange and the MidAmerica commodity Exchange,[3] one between the Board of Trade of the City of Chicago and the New Orleans Commodity Exchange,[4] and the other between and among NFA and the Board of Trade of the City of Chicago, the Board of Trade of Kansas City, Missouri, Inc. the Minneapolis Grain Exchange and the New Orleans Commodity Exchange. The Commission also approved further revisions to the first joint audit plan which included making NFA a party thereto.[5]

Each of the eleven contract markets and the NFA is therefore a party to at least one approved DSRO plan, and several self-regulatory organizations are parties to more than one plan. However, not all of the self-regulatory organizations are parties to the same plan, so many FCMs have more than one DSRO.[6]

Each joint audit plan provides for a delegation by the parties to the plan to a DSRO of the responsibility for the following functions with respect to each FCM which is a member of more than one such party:

1. Monitoring and auditing for compliance with the minimum financial and related reporting requirements of the various contract markets;

2. Receiving the financial reports necessitated by such minimum financial and related reporting requirements; and

3. Monitoring and examining the books and records kept by FCMs relating to their business of dealing in commodity futures and cash commodities, insofar as such business relates to its dealings on contract markets.

When the Commission adopted rules to govern the pilot program in exchange-traded commodity options, § 1.52(c) was amended to provide that a contract market's responsibilities for such functions as reviewing promotional material and conducting sales practice audits of FCMs in connection with their exchange-traded option activities could be delegated to a DSRO under a joint audit plan.[7] The Commission also stated that "Existing joint audit plans which already have been approved by the Commission may, upon notice to the Commission, be expanded to include monitoring and auditing of FCMs with respect to option activities."[8] In

[1] The Commission published a notice requesting comment on that plan at 44 FR 61239 (October 24, 1979).

[2] The Commission published a notice requesting comment on those revisions at 47 FR 15403 (April 9, 1982).

[3] The Commission published a notice requesting comment on that plan at 45 FR 48682 (July 21, 1980), and approved the plan on October 6, 1980.

[4] The Commission published a notice requesting comment on that plan at 46 FR 11572 (February 9, 1981), and approved the plan on March 30, 1981. The New Orleans Commodity Exchange has since changed its name to the Chicago Rice and Cotton Exchange.

[5] The Commission published a notice requesting comment on the fourth joint audit plan and the revisions to the first joint audit plan at 48 FR 9682 (March 8, 1983).

[6] The Commission's Division of Trading and Markets ("Division") made a preliminary review of a draft of the new joint audit plan and in its comment letter on that draft, the staff requested that the parties indicate whether the new joint audit plan will supersede, modify or have no effect upon existing joint auditing arrangements. When the new joint audit plan was submitted for approval, the cover letter stated that "[e]ach Exchange will inform the Division of Trading and Markets as to the effect the Agreement will have on pre-existing joint audit contracts." The Chicago Board of Trade has informed the Division that its joint auditing arrangements with the MidAmerica Commodity Exchange and the Chicago Rice and Cotton Exchange have been terminated. Further, the Chicago Board of Trade informed the Division that its joint auditing arrangements with the Minneapolis Grain Exchange, the Board of Trade of Kansas City, Missouri, Inc., and the NFA remain in effect, but those contracts have been modified to include only mutual broker-dealer member firms. The Chicago Board of Trade also informed the Division that it remains responsible to conduct sales practice audits of all FCMs which are member firms only of the Board of Trade of Kansas City, Missouri, Inc. The division has not yet been advised with respect to the effect of the new joint audit plan on any other joint auditing arrangements.

[7] 46 FR 54500, 54511, 54245, 54530, 54531 (November 3, 1981).

[8] 46 FR 54500, 54511, (November 3, 1981).

connection with the filing of applications for designation as a contract market for option trading, and in other correspondence from those responsible for the operation of the joint audit plans, the various contract markets involved in option trading have provided such notices. NFA has also submitted a document setting forth its program for regulating the option-related activities of its members, which the Commission has approved.

The new joint audit plan will have all of the self-regulatory organizations as parties, including all of the contract markets and the NFA.[9] As a result, all FCMs will have only one DSRO with respect to the commodity-related activities, whereas some FCMs now have two DSROs. This development is in keeping with the spirit of Commission Rule 1.52 and the concept of joint auditing arrangements among the self-regulatory organizations. However, since the Chicago Board of Trade, the Minneapolis Grain Exchange, the Board of Trade of Kansas City, Missouri, Inc. and the Chicago Rice and Cotton Exchange have not entered into a separate agreement with the New York Stock Exchange, Inc. to serve as a contract auditor for FCM/broker-dealers, as the other self-regulatory organizations have, certain FCM/broker-dealer will still have both a commodity-related DSRO and a securities-related one.

As noted above, the Commission's Division of Trading and Markets made a preliinary review of a draft of the new joint audit plan which was submitted previously. The Division's comment letter on that draft noted that the Division would not recommend Commission approval of the joint audit plan unless it was made clear that any representative of the Commission, upon his or her request, has access to and the right to make copies of any documents generated or received by any party to the plan pursuant to the party's functions thereunder. Such request may be oral or written and shall not be subject to prior notification or authorization. Although the contract submitted for Commission consideration does not address this issue, the Division's staff has been informed that a separate letter on this issue will be forthcoming. This issue also arose in connection with the first joint audit plan and was resolved in that instance by separate correspondence.

The Commission also notes, from its own preliminary review of the document submitted for approval, that the new joint audit plan provides that information generated or received by the DSRO pursuant to its functions under the plan shall not be disclosed in response to a civil subpoena or summons until five business days after the DSRO and all parties of which the FCM to which the information relates is a member, and the FCM itself, have been notified of the subpoena, or for such shorter period of time as may be provided pursuant to an order issued by a court of competent jurisdiction. The Commission's view is that such a provision is unnecessary to the basic operation of the joint audit plan and that it may create confusion among the parties to the plan. The parties to the plan should not create potential liability among themselves for compliance with a court order, and the Commission recommends that the provision be deleted from the joint audit plan. In any event, it is the Commission's intention, based upon its preliminary review of the plan, to exclude the provision referred to in this paragraph from any general approval of the new joint audit plan, if such provision remains a part of the contract among the parties.

The Division's comment letter on the draft contract also stated that reports on all audits conducted by a DSRO should be furnished to each of the parties of which the audited firm is a member, instead of reports on full audits only. Although this issue is also not addressed in the contract submitted for Commission consideration, the Commission notes that Rule 1.52(e) requires a DSRO to report to other self-regulatory organizations which are parties to a joint audit plan any violation of such other self-regulatory organizations' rules and regulations for which the responsibility to monitor, audit or examine has been delegated to such DSRO.

The Division's comment letter further noted that § 33.3(b)(1)(ii)(B) of the Commission's rules (48 FR 35248, 35301–02 (August 3, 1983)) provides that an introducing broker can solicit or accept orders for exchange-traded commodity options if it is operating pursuant to a guarantee agreement with an FCM, and the FCM is a member of a self-regulatory organization with Commission-approved rules that govern the option-related activity of the introducing broker. The draft contract made no reference to introducing brokers, nor does the contract submitted for Commission approval. The Commission believes that the joint audit plan should state that a DSRO conducting an option sales practice audit or an FCM will audit any introducing broker guaranteed by the FCM as if the introducing broker were a branch office of the FCM. If guaranteed introducing brokers are not referred to in the joint audit plan, there could arise the anomalous situation of an introducing broker being subject to multiple option sales practice audits while an FCM is subject to only a single audit.[10]

Requests for a copy of the documents submitted in connection with the new joint audit plan, including the lists of which DSROs are responsible for which FCMs, may be made to the Secretariat.

Issued in Washington, D.C., on July 11, 1984 by the Commission.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 84-18732 Filed 7-16-84; 8:45 am]

BILLING CODE 6351-01-M

[9] The New York Futures Exchange, Inc. is still reviewing the joint audit plan at this time, especially with respect to the provisions governing confidentiality of information, but the Commission's staff has been informed by representatives of that contract market that it will become a party to the new joint audit plan.

[10] The Commission also notes that its staff has received several inquiries regarding the ability of introducing brokers to engage in exchange-traded option transactions. The staff has told those persons the self-regulatory organization must provide for such activity in its rules, and agree to undertake sales practice auditing responsibilities with respect to introducing brokers, before introducing brokers can become so engaged. The Commission again urges the self-regulatory organizations to move expeditiously on this matter.

New York Mercantile Exchange; Proposed Amendments Relating to the Gulf Coast Leaded Regular Gasoline and Gulf Coast Unleaded Regular Gasoline Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The New York Mercantile Exchange ("NYMEX" or "Exchange") has submitted a proposal to amend its Gulf Coast leaded regular gasoline and Gulf Coast unleaded regular gasoline futures contracts. The Exchange's proposed amendments would expand the delivery area for these contracts to extend from Pasadena, Harris County, Texas to Collins, Covington County, Mississippi from the current delivery area which includes only two counties, Harris and Jefferson Counties, Texas. The proposed amendments would also raise the fixed surcharge for truck deliveries to $.0125 (1¼ cent) per gallon from the current surcharge of $.0050 (½ cent) per gallon and establish a barge and tanker delivery surcharge of 10

cents per barrel. Further, the NYMEX proposes to revise the delivery procedures of the Gulf Coast gasoline contracts so that the procedures would be analogous to those of the Exchange's New York Harbor petroleum product futures contracts. These revisions include the establishment of a *force majeure* provision and a definition of circumstances which constitute *force majeure,* a modification of the rules governing exchanges of futures for physicals ("EFP's") and the establishment of an Alternative Delivery Procedure ("ADP"). The Commodity Futures Trading Commission ("Commission") had determined that this proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received by August 16, 1984.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to New York Mercantile Exchange's proposed amendments to the Gulf Coast gasoline contracts.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. (202) 254-7303.

SUPPLEMENTARY INFORMATION: Currently, the delivery area of the NYMEX Gulf Coast gasoline contracts consists of delivery facilities located in only two counties: Harris County, Texas and Jefferson County, Texas. Under the Exchange's proposal, the delivery area would be expanded to include Colonial Pipeline Company injection points from Pasadena, Harris County, Texas to Collins, Covington County, Mississippi.

Currently, the NYMEX Gulf Coast gasoline contracts specify a fixed truck delivery surcharge of $.0050 (½ cent) per gallon. The Exchange is proposing to increase the surcharge for truck deliveries to $.0125 (1¼ cents) per gallon. The NYMEX indicates that the proposed $.0125 surcharge represents an average of those figures quoted by industry participants active in the cash market.

The NYMEX is also proposing to establish a barge and tanker delivery surcharge of 10¢ per barrel. The Exchange states that the proposed surcharge covers the cost of using pumps and other ancillary equipment at the docks when a barge or tanker delivery is made. The Exchange submits that this surcharge compensates the seller for the costs involved in making delivery to buyers who choose barge or tanker.

In addition, under the Exchange's proposal, the buyer would be required to submit "Initial Delivery Instructions" by 4:30 p.m. on the fourth, rather than the fifth, business day of the delivery month. The revised contract would require the buyer to specify in the Initial Delivery Instructions a consecutive 5-day period when delivery is to be initiated, or in the case of pipeline delivery, the designated pipeline cycle. Further, the proposed amendments would require the buyer to verify with the seller that the method of delivery and the quantity to be taken on delivery conform to the capability and capacity of the seller's delivery facility.

The NYMEX is also proposing that, following receipt of the buyer's initial delivery instructions, the seller may, under certain circumstances, refuse the buyer's original delivery date, and the buyer would then select a revised delivery date. Under the proposed regulations, following receipt of the buyer's delivery instructions, the seller must notify the buyer of its ability or inability to make delivery in accordance with the delivery intructions by issuing a "Notice of Clearance" or a "Notice of Non-Clearance" no later than 4:30 p.m. on the business day the delivery instructions are received.

If the seller gives a Notice of Clearance, delivery then follows in accordance with the buyer's original delivery instuctions. A seller can issue a Notice of Non-Clearance only if there is a good faith inabiity to deliver on the part of the facility used by the seller on the date nominated by the buyer. If a Notice of Non-Clearance is issued, the seller is required to post with the Clearing House on the day following the issuance of the notice additonal margin equal to 25% of the total contract value of all contracts listed in the delivery instructions. The proposed regulations require the buyer receiving a Notice of Non-Clearance to issue Revised Delivery Instructions not later than 10:30 a.m. on the third business day following notification of non-clearance. The revised delivery instructions must specify a new date and time at least 24 hours before or after the date and time nominated in the original delivery instructions.

Under the current rules, a buyer receiving a Notice of Clearance is required to post with its clearing member the full payment for the delivery unit by 12 noon of the day following delivery. Under the proposed rules, full payment for the delivery unit will be made by 12 noon on a business day at least two days prior to the scheduled date of lifting.

The revised contract states that in the event that the seller is unable to make delivery in accordance with the buyer's revised delivery instruction because of *force majeure,* the seller shall, not later than 4:30 p.m. of the day on which the buyer gives the seller revised delivery instructions, give to the buyer a second Notice of Non-Clearance with a copy to the Exchange, and state the reasons for such inability. When such a Notice of Non-clearance is given, the notice would be referred to the Exchange's Petroleum Delivery Committee no later than the next business day. A committee comprised of 12 persons would be established, and this committee would have the authority, upon verification that circumstances constituting *force majeure* exist, to extend the time of delivery up to five calendar days from the revised delivery instructions, to change the delivery mode or the delivery site. According to the Exchange, it is common practice for firms engaged in petroleum trading to incorporate *force majeure* clauses in their cash contracts in case delivery obligations cannot be met due to circumstances beyond their control.

The NYMEX has also proposed to modify its rules governing exchanges of futures for physicals ("EFP's"). Currently, EFP's may be executed at any time in the delivery month up until the second business day prior to the end of the delivery month. In addition, under the current rules, a seller is required to have the gasoline in its possession before executing an EFP. Under the amended rules, an EFP may not be executed after 11:00 a.m. on the first business day following the termination of trading in the futures contract, and a seller does not have to possess the contract commodity before entering into an EFP if the seller holds a binding commitment from a third party to deliver the commodity.

The proposed revisions to the NYMEX Gulf Coast gasoline contracts would also establish an "Alternative Delivery Procedure" (ADP). Under this procedure, a matched buyer and seller may mutually agree to settle their delivery obligations under terms and conditions which differ from those specified in the contract's delivery procedures. The proposed alternative delivery procedure would provide matched buyers and sellers with the same flexibility in settling delivery obligations as is currently available under existing EFP

rules except that cash settlement would also be allowed under the new ADP rules.

The NYMEX's Gulf Coast gasoline contracts are currently not listed for trading. The Board of Governors of the Exchange will set an effective date for the proposed amendments after approval by the Commission.

In accordance with section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982), the Commission has determined that the proposal submitted by the NYMEX concerning its Gulf Coast gasoline futures contracts is of major economic significance. Accordingly, the NYMEX's proposal will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone by calling (202) 254-6314.

Other materials submitted by the NYMEX in support of the proposed rules may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1983)). Requests for copies of such materials should be made to the FOI, Privacy and sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jane K Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, by August 16, 1984. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C., on July 11, 1984.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 84-18783 Filed 7-16-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Special Services for Disadvantaged Students Program

AGENCY: Department of Education.

ACTION: Establishment of Final Funding Priority for Fiscal Year 1984.

SUMMARY: The Secretary of Education establishes a funding priority for new awards for fiscal year 1984 under the Special Services for Disadvantaged Students (Special Services) Program.

In awarding grants the Secretary will give priority to each "acceptable application" submitted under the Special Services Program fiscal year 1984 competition by an eligible applicant located in Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, notwithstanding 34 CFR 646.30 of the Special Services Program regulations. The authority for this priority is section 1204(a) of the Higher Education Act of 1965, as amended, 20 U.S.C. 1144(a).

Authority for the Special Services Program is contained in sections 417A and 417D of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070d, 1070d-1b. Under the program, the Secretary is authorized to make grants to institutions of higher education only. The purpose of the grant is to permit an applicant to carry out a project designed to provide supportive services to disadvantaged students who are pursuing programs of higher education.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

SUPPLEMENTARY INFORMATION: Section 1204(a) of the Higher Education Act of 1965, as amended, provides in pertinent part that the Secretary is authorized to provide modifications of any programs under this Act as the Secretary deems necessary in order to adapt such programs to the needs of Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands. Program modifications must be established in cooperation with the governments of such territories and shall be governed by a memorandum of understanding between such governments and the Department of Education.

Under this authority, the Secretary has entered into a memorandum of understanding with Guam, American Samoa, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Island. With regard to modifications in the Special Services Program, each memorandum of understanding provides that:

> Subject to the public comment and other requirements of Section 431 of the General Education Provisions Act, the Secretary may give funding priority for new awards under the Special Services Program fiscal year 1984 competition to each "acceptable application" submitted by an eligible applicant located in [Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands] notwithstanding 34 CFR 646.30 of the Special Services program regulations.

An "acceptable application" is defined as an application that receives a score of not more than 15 points below the application with the lowest score that would otherwise have been selected for funding under the criteria set forth in §§ 646.31 and 646.32 of the Special Services Program regulations.

On April 3, 1984, the Secretary of Education published in the Federal Register, 49 FR 13182-13183, a notice of proposed priority for fiscal year 1984 under the Special Services for Disadvantaged Students Program.

Interested parties were given 30 days to submit comments regarding the proposed priority. A total of sixteen comments were received. The following is a summary of the comments received and the Secretary's response to those comments, including any changes.

Comment: The granting of a funding priority is not authorized under section 1204 of the Higher Education Act.

Response: No change is made. Section 1204, stated above, provides the Secretary with broad authority to modify higher education programs to address the unique needs of the territories.

Comment: The funding priority will set a precedent for future funding slates.

Response: No change is made. The memoranda of understanding negotiated with the territories provide for funding priority under HEA Title III fiscal year 1982 planning grants and Title IV-A fiscal year 1984 grants only.

Comment: As a result of the funding priority, proposals of lesser quality will be funded.

Response: No change is made. On the basis of a study conducted in accordance with section 1204 of the Higher Education Act, the Secretary determined that in order to address the unique educational needs of the insular areas it is necessary to grant a funding priority. The further consideration given to an application under this funding priority is not inconsistent with the currently authorized consideration given TRIO applications based on prior experience.

Comment: The funding priority was established after proposals were received and rated.

Response: No change is made. Although the funding priority was published after the fiscal year 1984 application closing date, the Secretary

had informed the Congress on July 14, 1982, that special treatment would be provided for postsecondary education institutions in the territories and noted that he had authorized the granting of a funding priority to these institutions. Further, the regulations governing the competition, including the criteria used by the Secretary to evaluate applications, were already in effect at the time applications were solicited. (See 34 CFR Part 646.)

Comment: The funding priority will affect the total number of applicants to be funded.

Response: No change is made. As the average amount of funds awarded to territorial postsecondary institutions will be comparable to the average amount of funds awarded to all new Special Services for Disadvantaged Students projects, the total number of applicants to be funded will not be affected by the funding priority.

Comment: Technical assistance should be provided rather than establishing a funding priority.

Response: No change is made. In reviewing the options developed by the analysis of the territories conducted by the Department, the Secretary determined that technical assistance alone would not be sufficient in helping territorial postsecondary institutions to overcome their unique educational needs.

Comment: The Northern Mariana Islands should be included in the final funding priority as the Governor of the Commonwealth of the Northern Mariana Islands has signed a memorandum of understanding with the Secretary of Education.

Response: A change is made. The Secretary has received a completed memorandum of understanding from the Governor of the Commonwealth of the Northern Mariana Islands and therefore has decided to include eligible applicants from this territory in the final funding priority. The remaining territory covered by section 1204, the Virgin Islands, has completed a memorandum of understanding and the Secretary has also decided to include eligible applicants from this territory in the final funding priority.

The Secretary of Education is establishing a funding priority for the fiscal year 1984 Special Services Program competition for acceptable applications received from institutions located in Guam, American Samoa, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands. For the purpose of this priority, an "acceptable application" means an application that scores not more than 15 points below the cut-off score for funding under the criteria set forth in §§ 646.31 and 646.32 of the Special Services Program regulations. (34 CFR Part 646).

FOR FURTHER INFORMATION CONTACT: Carol J. Smith, Director, Division of Student Services, U.S. Department of Education (Room 3022, Regional Office Building 3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 472-1357

(20 U.S.C. 1070d-1b and 1144(a))

(Catalog of Federal Domestic Assistance Number 84.042 Special Services for Disadvantaged Students Program)

Dated: July 11, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 84-18880 Filed 7-16-84; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Continuing Education; Meeting

AGENCY: National Advisory Council on Continuing Education, Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Annual Report Review Committee of the National Advisory Council on Continuing Education. It also describes the functions of the Council. Notice of meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: August 17, 1984.

ADDRESS: Hyatt Regency Hotel, 400 New Jersey Avenue, NW., Washington, D.C. 20001.

FOR FURTHER INFORMATION CONTACT: Dr. William G. Shannon, Executive Director, National Advisory Council on Continuing Education, 425 Thirteenth Street, NW., Suite 529, Washington, D.C. 20004, Telephone: (202) 376-8888.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Continuing Education is established under section 117 of the Higher Education Act (20 U.S.C. 1109), as amended. The Council is established to advise the President, the Congress, and the Secretary of the Department of Education on the following subjects:

(a) An examination of all federally supported continuing education and training programs, and recommendations to eliminate duplication and encourage coordination among these programs;

(b) The preparation of general regulations and the development of policies and procedures related to the administration of Title I of the Higher Education Act; and

(c) Activities that will lead to changes in the legislative provisions of this title and other federal laws affecting federal continuing education and training programs.

The meetings of the Council are open to the public. However, because of limited space, those interested in attending are asked to call the Council's office beforehand.

The Annual Report Review Committee will meet from 8:30 A.M. until 5:00 P.M.

The Committee will prepare a draft of its Annual Report to the President, the Congress, and the Secretary of Education. This draft will be presented for approval to the full Council at its meeting in September.

Records are kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Continuing Education, 425 Thirteenth Street, NW., Suite 529, Washington, D.C.,

Signed at Washington, D.C. on July 11, 1984.

William G. Shannon,

Executive Director.

[FR Doc. 84-18383 Filed 7-16-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1894-010]

South Carolina Electric & Gas Co.; Application for Change in Land Rights

July 13, 1984.

Take notice that South Carilina Electric & Gas Company, Licensee for the Parr Project, FERC No. 1894, in Fairfield and Newberry Counties, South Carolina, field on March 15, 1984, an application for authorization to transfer certain project lands back to the original owners.

The lands to be transferred are located within Fairfield County, South Carolina, adjacent to the Monticello Reservoir, and would consist of 7.04 acres. The lands have been found to be in excess of the lands needed for shoreline control pursuant to Article 48 of the license.

Correpsondence with the Licensee should be directed to: Peyton G. Bowman, Esquire, Brian J. McManus,

Esquire, Reid & Preist, 1111 19th Street, NW., Washington, D.C. 20036, and Randolph R. Mahan, Esquire, South Carolina Electraic & Gas Company, P.O. Box 764, Columbia, South Carilina 29218.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 1902590–26 (1983). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before August 23, 1984.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Deputy Director, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any moation to inatervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–18895 Filed 7–16–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–539–000]

El Paso Natural Gas Co.; Application

July 13, 1984.

Take notice that on July 3, 1984, El Paso Natural Gas Company (Applicant), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP84–539–000 an application on behalf of certain producer-suppliers currently selling natural Gas to Applicant, for permission and approval under section 7(b) of the Natural Gas Act for blanket, partial abandonment of certificated sales to Applicant for resale of those volumes of natural gas as Applicant may hereinafter release on the terms and in the circumstances hereinafter described, and for a certificate of public convenience and necessity, pursuant to section 7(c) of the Natural Gas Act, with pre-granted abandonment authorization under section 7(b), providing blanket limited-term authorization for said producer-suppliers to sell such released quantities of natural gas in interstate commerce to third-parties for resale. Applicant also seeks a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act with pre-granted abandonment authorization, providing blanket limited-term authorization for the transportation in interstate commerce of such released quantities of natural gas. The proposals are all more fully set forth in the application on file with the Commission and open for public inspection.

Applicant asserts there is presently available under Applicant's existing gas purchase contracts a very substantial quantity of gas which is not now required to serve Applicant's own existing market requirements but which, Applicant believes, could be sold in competition with alternative fuels to serve incremental end-uses in its present California and east-of-California market areas if the price were right. In particular, Applicant asserts that there is a large potential market for gas for use in enhanced oil recovery operations in and around the Bakersfield area in central California and that other, smaller incremental market opportunities may exist in California, Arizona, and Nevada. However, applicant asserts, gas is not presently available to serve these potential loads at competitive prices.

Applicant states its proposal is designed to offer Applicant's producer-suppliers the opportunity to negotiate directly with potential purchasers (including, particularly, Applicant's existing customers) to supply these loads with gas which applicant is willing to release for that purpose from existing contract commitments and to transport. Applicant asserts that the availability of such arrangement would provide Applicant with an important tool in its on-going attempt to renegotiate existing supply arrangements to introduce more flexible and market-oriented pricing and take-or-pay terms.

Applicant asserts it has sustained a precipitious decline in sales of natural gas on its interstate transmission pipeline system in the recent past. It is further asserted that this, in turn, has substantially reduced the amount of gas which Applicant has been able to purchase and receive from its producer-suppliers under existing gas purchase contracts. As a result, Applicant states, it may be subject to potentially large claims under take-or-pay provisions in said contracts.

Applicant states its total system sales have declined from approximately 1.27 trillion cubic feet in 1981, to 1.02 trillion cubic feet in 1982, and to 0.87 trillion cubic feet in 1983. Projected sales for 1984 and 1985 are 0.87 trillion cubic feet and 0.92 trillion cubic feet, respectively. It is stated that these sales figures reflect approximately a 100 percent level of takes from producer-suppliers (measured against curtailable production) in 1981, an 80 percent level of takes in 1982, a 63 percent level of takes in 1983 and projected level of takes in 1984 and 1985 of 68 percent and 75 percent, respectively. Applicant states curtailable production excludes "non-swing" or "non-controlled" gas from casinghead sources, residue plants and from wells that cannot be shut in without reservoir damage.

Applicant states that faced with declining levels of takes from its producer-suppliers and the associated potential take-or-pay liabilities, and with the further need to control its purchased gas costs in order that its own rates might remain competitive both now and after the scheduled well-head price deregulation of Natural Gas Policy Act of 1978 (NGPA) sections 102 and 103 gas, it has introduced certain gas take and purchase policies and a comprehensive purchase contract amendment program.

Applicant states that as a consequence of the decline in total market demand which began in 1982, applicant has been forced to cut back its takes from dedicated sources. To the extent operationally possible, Applicant asserts, it schedules its takes of gas supplies from all sources committed to its interstate system, including pipeline-owned and affiliate-owned supplies, on a *pro rata* basis (whereby the same percentage of available, curtailable, allowable production is taken from each state) up to the level of production sufficient to meet system-wide contractural take-or-pay requirements; and when market demand permits the production of supplies above take-or-pay levels, Applicant states, the additonal market demand is satisfied with supplies scheduled on an annual least-cost-mix basis, to the extent permitted by operational and state regulatory constraints.

Applicant further assets that in July 1982 it suspended for the time being the acquisition of new gas supplies.[1] Applicant states that this action was mandated, in part, because takes from already dedicated sources were falling far below total availability, thus increasing potential take-or-pay exposure. Applicant asserts that the continuing attachment of substantial new supplies would further dilute Applicant's takes from dedicated reserves, thus further exacerbating Applicant's potential take-or-pay exposure. Moreover, Applicant states that uncertainty concerning future market demand made it questionable whether additional supplies might be required and in what quantities. Applicant states that this suspension of new gas purchase remains in effect.

Applicant states that by letter dated March 14, 1983, Applicant adopted a gas purchase policy which was communicated to all of Applicant's customers.

Applicant states it would purchase gas at the most favorable prices obtainable, in order to enhance the marketability of such gas to all major market segments to be served. Applicant states its purchasing policies would have the objective of securing new supplies at prices not exceeding NGPA section 102 levels, on an annual weighted average deliverability basis.

Applicant also states it would continue to secure broad "marketability-out" and "pass-through" provisions and would continue to avoid use of "favored-nations" clauses in all new gas purchase agreements. Applicant states it would also seek to obtain more flexible take-or-pay provisions having adequate makeup rights consistent with the Commission's Statement of General Policy issued December 16, 1982, in Docket No. PL83-1. Applicant states it would attempt to renegotiate existing contracts that do not conform to these guidelines.

Applicant asserts it would continue to exercise reasonable price flexibility in existing and future contracts to limit future gas cost rate increases.

Applicant asserts it would observe the guidelines and principles set forth in the letter with respect to all present and future contracts for its purchase of natural gas in a first sale from any and all affiliates of Applicant.

To the extent practicable consistent with operational and contractual limitations and under existing regulatory and statutory conditions, Applicant states, it would manage its available dedicated gas supplies in a manner intended to achieve a "least cost gas mix" on an annual basis. Applicant states it would annually report to its customers and other interested parties on procedures to be employed to achieve a "least cost gas mix" for the following yearly period.

Applicant asserts that no later than January 15 and July 15 of each year, parties who are customers of Applicant would provide to it 10-year forecasts of demand. Applicant asserts the forecasts would be accompanied by a thorough explanation of the underlying assumptions. Applicant asserts that follow-up meetings would be scheduled to provide it with a clear understanding of the forecast and all underlying assumptions.

Based upon an appropriate demand forecast developed from the data submitted in accordance with the letter and other relevant data, Applicant states, it would provide 10-year gas supply and price forecasts to its customers and other interested parties not later than April 15 and October 15 each years. It is stated that follow-up meetings would be held with such parties to discuss short-and long-term supply and demand and any measures anticipated by Applicant to bring the two in balance. Applicant states that such discussions would include a report on past period activities by it and would also address whether the aforementioned gas purchasing policies remain viable in light of conditions in the marketplace, including the price of alternative fuels. In connection with these discussions, Applicant states, it would report on the nature of its new gas purchase contracts, its efforts to renegotiate existing contracts, and the effect of its gas purchase policies on the price and marketability of gas and the adequacy of its supplies.

Applicant proposes that the principles and guidelines set forth would be observed until such time as it determines a need to alter its gas acquisition policies consistent with the supply needs of Applicant's customers. In the event that Applicant determines the need to alter the policies in a manner that would significantly affect the rates charged by it to its customers, Applicant states, it would notify its customers and other interested parties of the nature of and reasons for the change and would receive the views of such parties. Applicant states that such notice (including a reasonable time for the parties to express their views) would be given prior to the implementation of any change.

Applicant states it has exercised market-out clauses in those contracts with producer-suppliers where it has the right to do so and in all of its contracts with its affiliate whether such contracts contain market-out provisions or not. Applicant states it has also otherwise applied the applicable market-out prices as a limitation on the prices to be ascribed to its own pipeline production which is valued on an NGPA basis. Effective March 1, 1983, and September 1, 1983, Applicant asserts, it exercised market-out to $5.00 and to $4.00 per million Btu, respectively, plus an allowance for severance tax reimbursement. Further, Applicant states, as of May 1, 1984, it exercised market-out to secure yet additional purchase price reductions.

In the fall of 1983, Applicant also states, it undertook a program to secure voluntary amendments to contracts which do not contain satisfactory market-sensitive pricing provisions. Applicant states that because it has been compelled to cease offering contracts for new supplies in mid-1982, Applicant was not able to offer new contracts covering uncommitted production in exchange of the amendment of existing contracts to add satisfactory market-out provisions. Nevertheless, Applicant states it was successful in securing the amendment of a number of contracts to include market-out provisions. That success occurred most often in connection with contract rollovers and other changes to existing contracts requested by producer-suppliers, it is explained.

Most recently, Applicant asserts, it initiated a comprehensive new program which has as one of its main objectives the amendment, to include broad market-sensitive provisions, of those remaining contracts which do not provide meaningful market-out rights. Applicant states that this so-called "contract cure program" was initiated by it through letters sent on April 3, 1984, to almost 3,000 of its producer-suppliers representing over 5,600 contracts that cover gas sales to Applicant from over 12,350 gas wells.

Applicant states that to those producer-suppliers who have one or more contracts with Applicant containing a market-out provision, it sent a "contract-amendment" letter, advising the producer-supplier of Applicant's decision to exercise market-out in all contracts where it has the right to do so with respect to the purchase of gas subject to NGPA sections 102, 107, and 108. Applicant asserts that the new price was $3.00 per million Btu, plus taxes, under existing purchase

[1] Applicant has not suspended its compliance with outstanding contractual commitments to add further supplies developed on acreage committed before July 1982, it is explained.

arrangements effective May 1, 1984. Applicant asserts that the producer-supplier was given an election to amend all of its contract(s) with Applicant in two respect: (i) All contracts between the producer-supplier and Applicant which did not contain market-out provisions were amended to include such; and (ii) all gas-well contracts between the producer-supplier and Applicant were amended to reduce applicable minimum take-or-pay levels to 50 percent for the period, January 1, 1982, through December 31, 1984, and to 60 percent commencing January 1, 1985, and continuing for the remaining term of each contract, in which case the new price under the modified arrangements was $3.50 per million Btu, plus taxes, effective May 1, 1984. Applicant states that this offer remained open through May 1, 1984.

On April 3, 1984, Applicant states, it mailed to other producer-suppliers who sell NGPA sections 102, 107, and 108 gas to Applicant that did not have contracts with Applicant which contained market-out provisions, a "voluntary contract-amendment" letter. Applicant states that the producer-suppliers were asked to amend voluntarily their contract(s) to include a broad market-sensitive price provision and lower take-or-pay requirements.

If the producer-supplier would not agree to so amend its contract(s), Applicant states, the voluntary contract amendment letter further advised that Applicant is willing to release (subject to the producer's receipt of any necessary abandonment authorizations) all NGPA sections 102, 107 and 108 gas committed by contract to Applicant and to transport any gas so released to any mutually agreeable point on Applicant's system so long as the transportation is rendered at Applicant's applicable rate(s) on file with the Commission and so long as Applicant has sufficient capacity to provide that transportation service without detriment or disadvantage to Applicant's existing customers and shippers with firm transportation rights.

Applicant states its contract cure program has thus far resulted in the amendment of contracts with 885 producer-suppliers to insert therein board market-out provisions and necessary reductions to minimum take-or-pay obligations. It is further stated that these 885 producer-suppliers represent approximately 30 percent of those producers to whom Applicant's contract cure program was addressed. Applicant states that the amendment contracts cover approximately 19 percent of the so-called "problem" gas, or approximately 68,000 Mcf per day of available supply.

Applicant asserts that the contract cure program (including the May 1, 1984, market-out produce reduction) has resulted in a reduction, thus far, of approximately $81 million per year in Applicant's purchased gas costs.

Applicant asserts that more than 317,000 Mcf per day of committed, available NGPA section 107 (deep and tight sands), NGPA section 108 and NGPA section 102 gas is still priced well above $3.00 per million Btu plus tax. Of this volume, approximately 170,000 Mcf per day are NGPA section 102 gas which is scheduled to be price deregulated on January 1, 1985. Applicant also asserts that of the 170,000 Mcf per day, some 141,000 Mcf per day are not now subject to an effective market-out provision. It is stated that on January 1, 1985, portions of that gas can be expected to increase dramatically in price under currently effective contract provisions.

Applicant states that in addition, approximately 134,000 Mcf per day of available NGPA section 103 gas (including 108,000 Mcf per day which are not now subject to effective market-out provisions) which are currently priced at approximately $2.90 per million Btu plus tax, are scheduled to be deregulated on either January 1, 1985, or July 1, 1987. It is asserted that at that time, the deregulated pricing provisions of problem contracts can be expected to drive the non-market-out NGPA section 103 price markedly upward.

Applicant asserts that this indicates the possibility that the price which Applicant may be required to pay for certain volumes would exceed the value which end-use markets would be placing on that gas. Additionally, Applicant states its potential aggregate take-or-pay exposure through 1985 could approximate $700 million under certain circumstances. Applicant asserts its goal is to gain price control over gas which is either currently priced above the market-out level and/or which is subject to price increases upon scheduled wellhead price deregulation and to limit insofar as possible its potential take-or-pay exposure.

Applicant asserts that the requested authorizations are necessary for the implementation of its experimental, limited-term proposal (sometimes hereinafter referred to as the "Special Transportation Program," the "Program," or "STP"). Applicant states that implementation of the Program holds the prospect of benefiting Applicant, its customers, and its producer-suppliers by (i) enhancing Applicant's opportunities to modify existing gas sales contracts to introduce more market-oriented pricing terms (including, where possible, broader "market-out" provisions and more flexible "take-or-pay" provisions); (ii) providing current, accurate information concerning the real value of gas in the market place; (iii) reducing Applicant's potential take-or-pay exposure; (iv) increasing the amount of natural gas that Applicant's producer-suppliers are able to sell; (v) augmenting producer-suppliers' cash flow; (vi) providing incentives to producer-suppliers to develop additional supplies of natural gas for the long term; (vii) more efficiently utilizing applicant's existing gas transmission capacity; (viii) generating transportation revenues available for crediting to Account 191; and (ix) reducing potential minimum bill charges to certain of Applicant's customers.

Under the STP, Applicant proposes to transport quantities of natural gas on behalf of any eligibile producer-supplier to or for any third-party purchaser for an eligible end-use within applicant's existing market area.[2] Applicant states it would not enter into any new purchase contracts in order that gas may be released for use under the STP and it would provide such assistance as it can to all producer-suppliers who choose to participate in the STP.

It is asserted that under the STP, the transportation services which Applicant would provide would be subject to its available pipeline capacity. Applicant states its total capacity available for such transportation would be prorated, as necessary, giving priority to that released gas which would have borne the highest price had it been sold to Applicant.

Applicant states that an eligible seller under Applicant's STP would be an existing producer-supplier to Applicant who (i) agrees or has agreed to the modification of existing contracts so as to introduce more flexible and market-oriented pricing terms and (ii) contributes or has contributed to a reduction of Applicant's potential take-or-pay exposure.

[2] It is anticipated that any transportation service subject to the Commission's jurisdiction which is rendered in connection with the Program, other than the service rendered by Applicant, would be performed on a self-implementing basis in accordance with the Commission's Regulations. However, to the extent that any such transportation cannot be accomplished on a self-implementing basis, Applicant requests blanket limited-term certificate authorization, with pre-granted abandonment authorization, authorizing such transportation by interstate and intrastate pipelines as the transporter in each case otherwise agrees to provide.

Applicant states the volumes of gas to be released by Applicant for sale by the eligible producer-suppliers would be excess to those volumes which Applicant requires to maintain full service to its existing customers. Applicant states that in releasing committed gas under the STP, it would retain the right to receive those volumes which it needs from time to time to serve its existing customers.

Further, Applicant asserts that all gas released under the STP would be from reserves which were committed to Applicant on or before the date of the issuance of the herein requested Commission authorizations for the STP.

Finally, Applicant asserts that only gas which is categorized as NGPA section 102, secton 103, section 107, or section 108 gas and which would otherwise bear a price to Applicant equalling or exceeding Applicant's system weighted average cost of gas (currently $2.6842 per dt) would be eligible for release.

Under the STP, and subject to each of the foregoing conditions, Applicant states it would be willing to release all or any portion of the eligible volumes under any existing purchase contract.

Applicant asserts that purchasers (including, particularly, Applicant's existing customers) may purchase and receive released gas under the STP so long as such gas is ultimately consumed within Applicant's existing California and east-of-California market areas and so long as the use made of such gas represents a new load not previously served by natural gas or a requirement which is being met (i) with an alternative fuel, (ii) through a producer direct sale arrangement, (iii) with gas made available under a Commission-approved industrial sales program or other, similar Commission-approved program, (iv) with gas purchased at Commission's approved special discount rate or in Commission-approved off-system sale by another pipeline, or (v) with propane or synthetic natural gas. Applicant states that these limitations were drawn from Commission orders approving experimental marketing proposals for other pipelines and are intended to assure that the uses to be served with released gas under the STP are, in fact, incremental loads on which Applicant's existing distribution customers do not presently depend.

In this regard, Applicant again states that the principal anticipated markets for released gas are in enhanced oil recovery operations in central California which are presently using crude oil and in a variety of smaller volume uses in Applicant's California and east-of-California market area which have either never used natural gas or have left gas for other fuels. Further, Applicant states that its two California distributor customers have themselves each requested the California Public Utilities Commission (CPUC) to approve rate schedules for the retail sale of gas for enhanced oil recovery operations at special market-oriented rates and the Commission to grant exemptions from its incremental pricing regulations as necessary to permit the distributors to offer gas at those rates.[3] Finally, Applicant states that Southern California Gas Company, Applicant's largest distributor customer, has on file with the CPUC its request for approval of an experimental rate schedule for the transportation of customer-owned gas within its service territory and that this proposal has been consolidated and set for hearing with the CPUC's own recently-initiated generic investigation concerning the transportation of customer-owned gas by gas utilities in the State of California.

Applicant states it would transport released gas under the STP, subject to available pipeline capacity. Applicant states that priority would be given recognizing Applicant's commitments to its existing customers and shippers. Since the transportation services to be rendered under the STP are subject to available pipeline capacity, Applicant states, it does not anticipate that it would need to construct any new facilities. However, should new, incidental facilities be required, for the delivery of released gas transported hereunder, Applicant requests blanket authorization for their construction and operation.[4]

Applicant states it may receive released gas for transportation under the STP from wells connected to its system or at other mutually agreeable receipt points. Applicant asserts it would redeliver the transportation quantities to third-party purchasers at existing points of delivery or at other mutually agreeable points of ultimate delivery by others to said purchasers.

Applicant states that it is anticipated that any transportation service subject to the Commission's jurisdiction and rendered on behalf of a third-party purchaser by parties other than Applicant would be performed in accordance with section 311 of the Commission's Regulations. To facilitate any incidental transportation of gas under Applicant's STP by intrastate pipelines, or any other entity, Applicant also requests that the Commission authorize (i) to the extent deemed necessary, intrastate pipelines who agreed to do so, to transport, on a self-implementing basis, released gas purchased for an eligible end-use in accordance with the terms and conditions of Subpart C of Part 284 of the Commission's Regulations and (ii) any other blanket transportation authorizations which may be necessary to the implementation of the STP.

Applicant proposes that the STP remain in effect for a limited period extending from the date on which an acceptable authorization is issued by the Commission through December 31, 1985. If warranted in Applicant's judgement, Applicant requests that it be allowed to shorten the period during which the STP would remain in effect by giving written notice to the Commission and to the participants stating the date on which the STP shall terminate.

Under the Program, Applicant states, it would charge for each dt of natural gas transported and delivered the appropriate rate as set forth in the *pro forma* tariff sheet Statement of Transportation Rates. As designed, Applicant asserts its *pro forma* initial special Rate Schedules STP-1 and STP-2 provide for, respectively, (i) a rate inclusive of the production-related and transmission costs, exclusive of gas related costs, costs and revenues associated with the processing and sale of natural gas liquids, costs associated with the transportation of Applicant's own gas by others and that portion of the cost classified in the demand component of Applicant's jurisdictional rate (Rate Schedule STP-1) and (ii) a rate inclusive of the production-related and transmission costs, exclusive of gas related costs, costs and revenues associated with the processing and sale of natural gas liquids and costs associated with the transportation of Applicant's own gas by others, but inclusive of costs classified in the demand component of Applicant's jurisdictional rates (Rate Schedule STP-2). Applicant asserts that the proposed rates under *pro forma* initial special

[3] In the case of Pacific Gas and Electric Company, the CPUC has already approved the implementation of the enhanced oil recovery rate schedule and the Director of this Commission's Office of Pipeline and Producer Regulation has issued an interim exemption from the Commission's incremental pricing regulations for sales under said rate schedule, it is submitted.

[4] Applicant requests that it be permitted to construct and operate any such minor facilities without further authorization, provided that such facilities do not require an investment exceeding $100,000. Applicant would report such data as the Commission deems appropriate concerning any such facilities in its monthly reports under the Program. Authorization for the construction and operation of any jurisdictional facility which requires an investment in excess of $100,000 would be sought through a separate application to the Commission, it is said.

Rate Schedule STP-1 and STP-2 also include GRI Funding Unit.[5]

In order to receive transportation service under the STP, Applicant states it would require that each shipper of released gas enter into an appropriate letter agreement with Applicant, which agreement would provide for the terms and conditions of the transportation service to be rendered by Applicant including the specific rate schedule applicable to the service. Applicant's undertaking in said letter agreement extends only to the use of its own system facilities.

Applicant states that the proposed transportation rates are based on the cost of service and sales volumes which were agreed to in Applicant's Docket No. RP82-33 rate settlement, as subsequently adjusted in compliance with Commission directives. Applicant states that such adjusted cost of service was then further adjusted in the development of the Rate Schedules STP-1 and STP-2 transportation rates to eliminate the cost of gas, both purchased and produced, by subtracting purchased gas costs and the wellmouth costs related to Applicant's own Category 3 pipeline production. Further, Applicant states that costs associated with the transportation of Applicant's own gas by others was eliminated since these costs are associated with Applicant's receipt of gas purchased from off-system locations for sale to its existing customers. It is asserted that because use of Applicant's underground storage facility is restricted to the protection of service to the Priority 1 and 2 requirements of Applicant's east-of-California customers, costs related to these storage facilities also have been eliminated in deriving the transportation rates. Finally, in deriving the Rate Schedule STP-1 transportation rate, a further amount equal to the costs reflected in the derivation of the demand charge being paid by Applicant's two-part rate customers has been eliminated.

[5] Consistent with prior Commission orders in other special marketing programs, Applicant asserts it would retain one cent per dt to cover out-of-pocket expenses. Further, with respect to customers who purchase gas from Applicant subject to a minimum bill provision and who otherwise purchase or transport released gas under Applicant's Program, Applicant would credit the total transportation revenues associated with Applicant's transportation of released gas delivered to such customers, less the one cent retained by Applicant, against the amount which that customer would otherwise owe under said minimum bill rather than to Account 191. This credit would offset but not exceed said minimum bill charge, it is explained. All other transportation revenues received by Applicant under the Program would be credited to Account 191, it is submitted.

Applicant states that the consummation of Applicant's STP involves the implementation and effectuation of three integrated regulatory conditions precedent: (i) Blanket, limited abandonment authorization to the extent deemed necessary, under section 7(b) of the Natural Gas Act, on behalf of certain producer-suppliers respecting their certificated sales to Applicant for resale; (ii) blanket limited-term certificate authorization to the extent deemed necessary, under section 7(c) of the Natural Gas Act, with pre-granted abandonment authorization, for those certain producer-suppliers to sell such released quantities of natural gas to third-party purchasers for eligible end-uses; and (iii) blanket limited-term certificate authorization, under section 7(c) of the Natural Gas Act, with pre-granted abandonment authorization, for Applicant to transport released quantities of natural gas in interstate commerce.

Additionally, Applicant requests the following ancillary authorizations:

(1) To the extent deemed necessary, blanket limited-term certificate authorization, with pre-granted abandonment authorization, authorizing interstate pipeline companies who agree to do so to transport volumes of released gas under the Program;

(2) To the extent deemed necessary, authorization for intrastate pipelines who agreed to do so, to transport released volumes subject to

(a) The terms and conditions set forth in this application; and

(b) The terms and conditions of Subpart C of Part 284 of the Commission's Regulations;

(3) Waiver of the reporting requirements of §§ 284.4(b), 284.106(a), 284.126, and 284.222(e) of the Commission's Regulations with respect to transportation rendered under the Program;

(4) On behalf of producer-suppliers selling released gas, and insofar as necessary, waiver of the requirements of §§ 157.24, 157.25, and 157.30 of the Commission's Regulations.

(5) Blanket limited-term certificate authorization, with pre-granted abandonment authorization, authorizing Applicant to construct and operate any minor, incidental facilities which may become necessary for the transportation and delivery of released gas; and

(6) Any additional or general waivers of the requirements of the Natural Gas Act, the NGPA or the Commission's Regulations as may be necessary to permit the successful implementation of the Program.

To assist the Commission in its on-going review of the STP, Applicant proposes to file with the Commission, within 60 days after the end of each month, monthly reports containing the following information:

(1) The name(s) of the producer-supplier(s) selling released gas under the Program;

(2) The sources of released gas and the applicable NGPA maximum lawful ceiling prices;

(3) The quantities of released gas by third-party producer-supplier;

(4) The price paid for released gas by third-party purchasers thereof;

(5) The third-party purchasers of released gas and the end-uses made thereof;

(6) The volumes of released gas purchased by each third-party purchaser;

(7) Copies of the agreements for the purchase and sale of released gas;

(8) The names of transporters of released gas and the authority under which the volumes were transported;

(9) Applicant's receipt points of released gas and the volumes received at each point;

(10) Applicant's delivery points for released gas and the volumes delivered at each point;

(11) The rates charged for transportation of released gas;

(12) Copies of the agreements for the transportation and delivery of released gas; and

(13) For those volumes of released gas for which blanket, limited abandonment authority has been granted.

(a) The docket under which the producer-supplier's sale for resale to Applicant was initially authorized.

(b) The date of the basic contract, and

(c) Identification of the applicable FERC Rate Schedule.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 2, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules

Take further notice that, pursuant to the authority contained in subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-18896 Filed 7-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-111-001]

Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co. Request Under Blanket Authorization

July 12, 1984.

Take notice that on June 21, 1984, Columbia Gas Transmission Corporation, 17000 MacCorkle Avenue, SE., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company, 3805 West Alabama Avenue, Houston, Texas 77027 (hereinafter collectively referred to as Columbia), filed in Docket No. CP84-111-001 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to continue to transport natural gas on behalf of Appleton Papers, Inc. (Appleton), under the authorization issued in Docket Nos. CP83-76-000 and CP83-496-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

By a request noticed on January 16, 1984, in Docket No. CP84-111-000 pursuant to the prior notice and protest procedure set forth in 18 CFR 157.205, Columbia was authorized to transport up to 1.4 billion Btu equivalent of natural gas per day through June 26, 1984, to Appleton's Camp Hill, Pennsylvania, plant.

Columbia proposes to continue the above-described transportation through November 1, 1984, on the same terms and conditions as the existing transportation authority.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-18897 Filed 7-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-509-000]

Hope Gas, Inc. (Formerly Consolidated Gas Supply Corporation); Application

July 12, 1984.

Take notice that on June 21, 1984, Hope Gas, Inc. (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP84-509-000 an application pursuant to section 1(c) of the Natural Gas Act for a declaration of exemption from the provisions of the Natural Gas Act and the Regulations of the Commission thereunder, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant's natural gas business, which was formerly a part of Consolidated Gas Supply Corporation, is eligible for an exemption because all of the gas received by Applicant within or at the boundary of a state is consumed within the state and Applicant's rates, services, and facilities are subject to regulation by a state commission. It is stated that the corporate reorganization authorized by the Commission Order issued December 20, 1983, in Docket No. CP80-346-000 has been substantially completed and has resulted in two separate entities—one, Consolidated Gas Transmission Corporation, which is subject to Commission jurisdiction, and Applicant, which is subject to the jurisdiction of the Public Service Commission of West Virginia.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 2, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-18899 Filed 7-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-286-000]

Hyde Park Development; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

July 12, 1984.

On April 24, 1984, Hyde Park Development, (Applicant), P. O. Box 25, Panama, New York 14767, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. Supplementary information was filed on June 11, 1984 and the facility was modified, as described in a filing submitted June 29, 1984. No determination has been made that the submittal constitutes a complete filing.

The topping cycle cogeneration facility will be located in Panama, New York. Heat will be recovered from the cooling water and exhaust of a 285 kilowatt engine generator, and used to meet the heating and hot water requirements of several apartment buildings. The primary energy source will be natural gas.

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. 84-18900 Filed 7-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-58-000]

Interstate Power Co.; Application

July 12, 1984.

Take notice that on June 29, 1984, an application was filed with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act by Interstate Power Company (Applicant), seeking an order authorizing the issuance and sale of 500,000 shares of additional Common Stock of the par value of $3.50 per share pursuant to its Dividend Reinvestment and Stock Purchase Plant.

Any person desiring to be heard or to make any protest with said application should file a petition to protest or intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before July 30, 1984, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). Copies of this application are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

FR Doc. 84-18898 Filed 7-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3918-002]

Jackson County, Oregon; Surrender of Preliminary Permit

July 12, 1984.

Take notice that Jackson County, Oregon, Permittee for the Gold Ray Project No. 3918, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 3918 was issued on September 29, 1981, and would have expired on August 31, 1984. The project would have been located on the Rogue River in Jackson County, Oregon.

Jackson, County, Oregon filed the request on June 5, 1984, and the surrender of the preliminary permit for Project No. 3918 is deemed accepted as of June 5, 1984, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-18901 Filed 7-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6592-001]

Virginia Electric and Power Co.; Surrender of Exemption From Licensing

July 12, 1984.

Take notice that Virginia Electric and Power Company, Exemptee for the proposed Harvell Hydro Project No. 6592, has requested that its exemption from licensing be terminated. The exemption from licensing was issued on February 28, 1983, and is located on the Appomattox River in Dinwiddie County, Virginia.

The Exemptee filed its request on May 24, 1984, and the surrender of the exemption from licensing for Project No. 6592 is deemed accepted 30 days from the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-18902 Filed 7-16-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OW-FRL-2632-3]

Water Pollution Control; Groundwater Systems Underlying Southern Oahu, HI; Request for Sole Source Designation of Aquifer System; Request for Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of receipt of petition and request for public comments.

SUMMARY: The Environmental Protection Agency (EPA) has received a petition requesting designation of the groundwater system underyling the Pearl Harbor area as the sole or principal source of drinking water for that area. The Pearl Harbor Aquifer is hydrologically connected to the Honolulu Aquifer, and the entire groundwater body is known as the Southern Oahu Aquifer. This notice opens a public comment period to solicit information relevant to the determination. EPA requests submission of relevant studies, data, or references to additional soures of information about the hydrology of the petitioned area and adjacent areas dependent upon the aquifer for drinking water.

DATES: Comments will be accepted until December 31, 1984. The decision to grant or deny the petition and any notices of public hearing will be published in the Federal Register and in newspapers of general circulation in the affected area. At least 30 days notice will be given before the hearing is to be conducted.

ADDRESSES: Written comments should be sent to: Environmental Protection Agency, Region 9, Water Management Division, Attn: Arizona/Hawaii/Nevada Branch (W-4), 215 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: George Wilson, Project Officer, at the above address or telephone (415) 974-8345 or FTS 454-8345. Copies of the petition will be made available upon request.

SUPPLEMENTARY INFORMATION: The petition was submitted under section 1424(e) of the Safe Drinking Water Act (Pub. L. 93-523) which authorizes the Administrator to determine on his own initiative, or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area, and which if contaminated would create a significant hazard to public health. On May 3, 1983, Hazel Cunningham, a concerned citizen from the Southern Oahu area petitioned EPA to designate the Pearl Harbor groundwater system underlying the area as the sole or principal drinking water source for that portion of Southern Oahu.

The Pearl Harbor Aquifer is hydrologically interconnected with the Honolulu Aquifer. The two interconnected portions are generally known as the Southern Oahu Aquifer. EPA intends to determine whether the entire Southern Oahu Aquifer or any of its portions warrant sole source designation. The area being considered for designation has the following boundaries:

(1) Northern—Judicial District boundary between Wahiawa and Waialua.

(2) Northeast—Judicial District boundary between Honolulu and Koolaupoko, Ewa and Koolauloa.

(3) Eastern—Kaau Rift Zone.
(4) Southern—Pacific Ocean.
(5) Western—Judicial District boundary between Wahiawa and Waialua, and between Ewa and Waianae.

Major population centers in the area include Honolulu, Pearl City, Aiea, Waipahu, Mililani, Wahiawa, Ewa, and Makakilo.

The petition reflects a collective concern by residents of the Southern Oahu regarding protection of their groundwater systems. The present estimated population which is serviced by the aquifer is estimated to be 622,500. The petition also indicates that no other feasible water supply exists in the area that would be of comparable volume and quality. Topographic maps of the area proposed for designation were included in the petition.

Information is solicited about the petitioned area and the areas dependent upon the aquifer for drinking water. Relevant material regarding the hydrology of the aquifer, the surface boundaries of the recharge zones, and the number and kinds of small entities (business, organizations, or governmental jurisdictions) receiving federal financial assistance would assist the Environmental Protection Agency in its evaluation of the southern Oahu aquifer system(s). Pursuant to the Regulatory Flexibility Act, all regulatory actions, which include sole source aquifer designations, must be evaluated with respect to impacts on small entities. In addition, EPA requests information on the existence of any other current or anticipated projects receiving federal financial assistance that may result in the contamination of the aquifer.

If the aquifer is so designated, no commitment for federal financial assistance may be entered into for any project which EPA determines may contaminate the aquifer. The sole source designation provides EPA with the opportunity to review these projects to assure that proper mitigation measures are taken to negate any adverse impacts to the area. EPA will decide whether or not to make the requested determination following its review of relevant data and after providing the opportunity for full public participation on its proposed decision.

Dated: June 20, 1984.

John Wise,

Acting Regional Administrator.

[FR Doc. 84-18830 Filed 7-16-84; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-2632-4]

Water Pollution Control; Petition Requesting Sole Source Aquifer Designation of the Seven Lakes Water Association Franchise Area, Snohomish County, WA, and Request for Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Public comments requested.

SUMMARY: The Environmental Protection Agency, Region 10, invites public comment on a petition requesting designation of the aquifer underlying the Seven Lakes Water Association Franchise Area in western Snohomish County, as the sole drinking water source for the area and on a proposal by EPA to include the entire Tulalip Plateau in the designated area. In particular, EPA requests data and references to additional sources of information. If the aquifer is so designated, no commitment for Federal financial assistance may be entered into for any project which EPA determines may contaminate the aquifer so as to create a significant hazard to public health. EPA may hold an informal public meeting at a location and date to be announced later.

DATE: Comments must be submitted on or before August 31, 1984.

ADDRESSES: Comments should be addressed to: Wendy Marshall, Environmental Protection Agency, Region 10, Drinking Water Programs Branch, M/S 409, 1200 Sixth Avenue, Seattle, Washington 98101. The petition and related documents can be examined during normal business hours at the following locations:

Environmental Protection Agency, Region 10 Library—12th Floor, 1200 Sixth Avenue, Seattle, Washington 98101

Marysville Public Library, 4811 72nd St. NE., Marysville, Washington 98270.

FOR FURTHER INFORMATION CONTACT: Wendy Marshall at (206) 442-1890 or FTS 399-1890.

SUPPLEMENTARY INFORMATION: On April 11, 1984, the Seven Lakes Water Association, Inc. submitted a petition requesting that the aquifer underlying their Franchise Area be designated as the sole drinking water source for the area. Significant portions of the petition are quoted below insections a-h.

(a) Identification of Petitioners and Petitioners' Interest

The Board of Trustees of the Seven Lakes Water Association is mandated . . . to make plans that will insure that all customers have dependable drinking water of the highest quality now and for future generations. The petitioner's desire is to cooperate with the U.S. Environmental Protection Agency to insure that all projects receiving federal financial assistance will be consistent with our common goal of safeguarding the aquifer that supplies our customers as well as the smaller purveyors in our area.

(b) Petitioner's Concerns Regarding Aquifer Contamination

Contamination of the aquifer by means of physical, chemical, biological, or radiological substance in the water would constitute a major health hazard since the total population of the area depends upon the aquifer for drinking water.

(c) Demographic and Hydrologic Information

The Tulalip Plateau is an area northeast of Marysville, Washington, that is bounded on its east by highway I-5, its west by Port Susan Bay, its north by the Stillaguamish River, and its south by Possession Sound. This plateau has a maximum elevation of 600 feet. It is surrounded by water on three sides and land not exceeding 100 feet elevation on its fourth. Hydrologically, it is an island with no usable water entering its aquifer from outside sources. The various studies by public and private geological organizations all support the theory that the plateau has one multi-level aquifer totally recharged by precipitation. The Seven Lakes Water Association and its franchised area is centrally located on the plateau.

The * * * area has basically the same boundaries as Census Tract 532 which shows a population of approximately 2,512 in 1980 with a projected population of 4,173 in the year 2000.

(d) Alternative Sources of Drinking Water

The Seven Lakes' franchised area and the entire Tulalip Plateau are without an alternate source of drinking water since no outside water resources or pipelines exist. The Seven Lakes Water Association does have an emergency intertie with the city of Marysville water system. The intertie allows Seven Lakes to receive a maximum of 200,000 gallons of water per day. The intertie is located and receives its water from a well that is drilled into the aquifer near Lake Goodwin. If the aquifer became contaminated, it would be of no value as an alternate source.

(e) Recharge Zones for the Aquifer

All of the ground-water studies conducted on the Tulalip Plateau accredit Lake Goodwin and the surrounding lakes as the major recharge source for the aquifer.

(f) Projects Which Might Contaminate the Aquifer

Any large industrial development could potentially contaminate the aquifer. Since the area is without sewers and all residences rely upon septic drainfields for disposal of sanitary waste, poorly designed, located, or constructed drainfields could pose a serious threat to the aquifer. The proposed sanitary landfill near Kayak Point could be a source of contamination.

(g) Public Water Systems Utilizing the Aquifer

The Seven Lakes Water Association with over 1000 members is the largest water purveyor on the Tulalip Plateau. The city of Marysville Water District has several wells and a water storage facility located on the plateau, but their overall contribution to the Marysville Water district is unknown. Warm Beach has a water system with over 300 services followed by several class 2, 3, and 4 purveyors including, among others, McKees Beach, Lake Ki's Sunrise Addition and Lake Howard.

(h) Summary

Although this petition for a sole source aquifer designation only applies to the Seven Lakes Water Association franchise area, it is [the petitioners'] strong conviction that the entire Tulalip Plateau is one hydrological entity and should get the sole source designation. All of the area inhabitants depend on the one aquifer for their total water supply. [The petitioners expressed their hope] that the recent United States Geological Service study of this area to be published this summer [would support their] conviction and offer the EPA the opportunity to expand the scope of [their] request.

(i) Area Under Consideration

Studies by the U.S. Geological Survey and others indicate that the Tulalip Plateau is one hydrogeologic entity. EPA is, therefore, proposing to expand the scope of the petition to include the entire Tulalip Plateau. EPA seeks public comment on this proposal as well as on the petition itself.

(j) Consequences of Designation

Section 1424(e) of the Safe Drinking Water Act states: If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

(e) Public Meetings

EPA may hold informal public meetings to explain the sole source aquifer program and provide the opportunity for public comment. The Regional Administrator will give widespread notice of such meetings.

Dated: June 14, 1984.

Ernesta B. Barnes,

Regional Administrator.

[FR Doc. 84-18829 Filed 7-16-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket Nos. 84-647 and 84-648; File Nos. BRH-830314VY and BPH-830701AC]

Marr Broadcasting Co. and San Jacinto Broadcasting Corp.; Hearing Designation Order

In re Applications of Marr Broadcasting Company, Has: 106.5 MHz, Channel 293, 100 kW (H&V), 470 feet, For Renewal of License of Station KXKX(FM) Galveston, Texas (MM Docket No. 84-647, File No. BRH-830314VY); San Jacinto Broadcasting Corporation, Galveston, Texas, Req: 106.5 MHz, Channel 293, 100 kW (H&V), 470 feet, (MM Docket No. 84-648, File No. BPH-830701AC) for construction permit.

Adopted: June 28, 1984.
Released: July 10, 1984.
By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it for consideration the 1983 license renewal application for Marr Broadcasting Company for FM Station KXKX in Galveston, Texas, and a mutually exclusive corporation permit application filed by San Jacinto Broadcasting Corporation.

2. Data submitted by the applicants indicate that there would be significant difference in the size of the area and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1m/Vm or greater intensity, together with the availability of other primary aural services in such areas will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. Construction permit applicant San Jacinto Broadcasting Corporation and renewal applicant Marr Broadcasting Company appear qualified to be Commission licensees. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

4. Accordingly, it is ordered, that, pursuant to section 309(e) of the Communications Act of 1934, as amended, the application of Marr Broadcasting Company, for renewal of license of Station KXKX(FM), Galveston, Texas, and the construction permit application of San Jacinto Broadcasting Corporation are designated for consolidated hearing, at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(2) To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

5. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

6. It is further ordered, that the applicants hearing shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give local notice to the hearing (either individually or, if feasible and consistent with the rules, jointly) within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-18787 Filed 7-16-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Nebraska; Amendment to Notice of a Major-Disaster Declaration

[FEMA-716-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of Nebraska (FEMA-716-DR), dated July 3, 1984, and related determinations.

DATED: July 10, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Nebraska dated July 3, 1984, is hereby amended to include the following areas among those areas determined to have been adversely affected by the castastrophe declared a major disaster by the President in his declaration of July 3, 1984: Burt, Cass, Cedar, Colfax, Cuming, Dixon, Dodge, Hayes, Howard, Jefferson, Nemaha, Otoe, Saline, Stanton, Thayer, Thurston, and Wayne Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing Code 6718-02)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-18806 Filed 7-16-84; 8:45 am]

BILLING CODE 6718-02-M

Wisconsin; Emergency and Related Determinations

[FEMA-3091-EM]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Wisconsin (FEMA-3091-EM), dated July 10, 1984, and related determinations.

DATED: July 10, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter of July 10, 1984, the President declared an emergency under the authority of the Disaster Relief Act of 1974, as amended, (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288) as follows:

I have determined that the damage in certain areas of the State of Wisconsin, resulting from severe storms and tornadoes during the period of April 27-28, 1984, is of sufficient severity and magnitude to warrant an emergency declaration under Pub. L. 93-288. I therefore declare that such an emergency exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to assist in all debris clearance and emergency protective measures required as a result of this incident. Consistent with the requirement that Federal assistance be supplemental, Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area. You are further authorized to allocate, from funds available for these purposes, such amounts as you find necessary for administrative expenses.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Ronald Buddecke of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Wisconsin to have been affected adversely by this declared emergency: Menominee, Oneida and Vilas Counties for assistance as authorized by the President's declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing Code 6718-02)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-18805 Filed 7-16-84; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 221-003508-004.

Title: Palm Beach Terminal Agreement.

Parties:

West India Shipping Company, Inc. (West India)

Gulfstream Line, Inc. (GL)

Port of Palm Beach District (Port)

Synopsis: The agreement modifies the basic agreement between West India and the Port which provided for the lease by the Port to West India of storage, warehouse and wharf space. The purpose of the modification is to allow the assignment of the premises from West India to GL. The parties will be bound by the basic agreement as amended. The demolition of certain office space will take place and the area will be used as additional storage space.

Agreement No. 224-010611.

Title: Boston Marine Terminal Agreement.

Parties:

Trans Freight Lines, Inc. (TFL)

The Massachusetts Port Authority (Authority)

Synopsis: The agreement provides for the granting of a preferential use lease, including the use of cranes, by the Authority to TFL at the Paul Conley Marine Terminal in the port of Boston. The premises are to be used as a public marine terminal. The term of the agreement will run to September 30, 1986. TFL will pay all applicable tariff charges contained in the Authority's Tariff No. 3. The parties have requested a shortened Federal Maritime Commission review period of 14 days.

Agreement No. 217-010612.

Title: LINABOL-CSAV Vessel/Space Charter Agreement.

Parties:

Lineas Navieras Bolivianas (LINABOL) Compania Sud Americana de Vapores (CSAV)

Synopsis: The proposed agreement covers the chartering of space by LINABOL on CSAV operated vessels between U.S. ports and Bolivia, and by CSAV on LINABOL vessels for cargo transported between ports on the West

Coast of South America, including ports in Chile, and inland points in South America to and from U.S. Atlantic, Gulf and Great Lakes Ports and U.S. inland coastal points. The proposed agreement also covers the chartering of vessels by LINABOL from CSAV, upon such terms as the parties may agree, for operation in the trade.

Agreement No. 217-010614.

Title: Seawinds/EAC Cross Space Charter and Equipment Rationalization Agreement.

Parties:

Seawinds, Ltd.

East Asiatic Company, Ltd.

Synopsis: The proposed agreement allows the parties to exchange container space on vessels serving the trade between ports on the West Coast of the United States and Canada (and inland points via such ports) and ports and points in the Far East. Additionally, it would permit the parties to cooperate in establishing their sailing schedules in the trade, to share shoreside services and facilities and to lease to one another container and other equipment.

Dated: July 12, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-18338 Filed 7-16-84; 8:45 am]

BILLING CODE 6730-01-M

Agreement Filed

The Federal Maritime Commission hereby gives notice that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of the agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on the agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No. 117-010613.

Title: Western Alaska Space Charter.

Parties:

Pacific Alaska Line, Westward, Inc.

Foss Alaska Line, Inc.

Synopsis: The proposed agreement would permit the as-needed, space-available charter of space to Foss Alaska on Pacific Alaska Line's last voyage of the 1984 shipping season in the Seattle, Washington-Western Alaska trade presently scheduled to depart Seattle on August 25, 1984. The proposed agreement would be open to membership by any vessel operating common carrier in the trade.

Filing Party: William H. Fort, Esquire, Kominers, Fort, Schlefer & Boyer, 1776 F Street, NW., Washington, D.C. 20006.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

Dated: July 12, 1984.

[FR Doc. 84-18331 Filed 7-16-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Meeting; Changes in Location and Times

On July 3, 1984 (49 FR 27365), the Board announced a meeting of its Consumer Advisory Council on July 18 and 19. Several changes have been made in the location and times of the meeting.

The meeting, which will be open to public observation, will take place in the Board Room, located on the second floor of the Eccles building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. The July 18 session is expected to begin at 9:00 a.m. and to continue until 5:00 p.m., with a lunch break from 12:00 to 1:00 p.m. The July 19 session is expected to begin at 9:00 a.m. and to conclude at 3:00 p.m., with a lunch break from 12:00 to 1:00 p.m.

Information about this meeting may be obtained from Mr. Joseph R. Coyne, Assistant to the Board, at (202) 452-3204.

Board of Governors of the Federal Reserve System, July 11, 1984.

James Mc Afee,

Associate Secretary of the Board.

[FR Doc. 84-18790 Filed 7-16-84; 8:45 am]

BILLING CODE 6210-01-M

Lafayette Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (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 August 8, 1984.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Lafayette Bancorp, Inc.*, Bridgeport, Connecticut; to become a bank holding company by acquiring 80 percent of the voting shares of Lafayette Bank and Trust Company.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *GNB Bankshares, Inc.*, Oakland, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to The Garrett National Bank, Oakland, Maryland.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Ruth Bank Corporation*, Ruth, Michigan; to become a bank holding company by acquiring 80 percent or more of the voting shares of Ruth State Bank, Ruth, Michigan.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Gardner Bancshares, Inc.*, Gardner, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Gardner National Bank, Gardner, Kansas.

2. *Prairie Capital, Inc.*, Augusta, Kansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Prairie State Bank, Augusta, Kansas.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First State Bancshares*, Thousands Oaks, California; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of The Oaks, Thousand Oaks, California.

Board of Governors of the Federal Reserve System, July 10, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-18791 Filed 7-16-84; 8:45 am]

BILLING CODE 6210-01-M

Metro Bancshares, Inc.; 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 accompained 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 Governoors not later than August 6, 1984.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Metro Bancshares, Inc.*, Kansas City, Missouri; to engage *de novo* through its subsidiary, bankers Mortgage and Investors Group, Inc., Kansas City, Missouri, in originating and servicing real estate loans.

Board of Governors of the Federal Reserve System, July 10, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-18792 Filed 7-16-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority; Office of Inspector General

This notice amends Part A (Office of the Secretary) of the Statement of Organization, Funcitions, and Delegations of Authority of the Department of Health and Human Services, to make a change in Chapter AF, Office of Inspector General (47 FR 20035, May 10, 1982; as amended by 47 FR 39616, August 9, 1982; 48 FR 4917, February 3, 1983; 48 FR 4919, February 3, 1983; and 49 FR 6015, February 16, 1984).

The purpose of this amendment is to reflect the reorganization of the Office of Investigations, a major component within the Office of Inspector General. The general overall responsibilities of the office will remain the same.

1. Amend section AF.20.D.1 of Chapter AF, in the matter immediately preceding paragraph (a), to read as follows:

The Office of Investigations consists of the following divisions and offices:

(a) Criminal Investigations Division.

(b) Civil Fraud Division.

(c) Headquarters Operations Division.

(d) Regional and Field Offices.

2. Amend section AF.20.D.1 a to read as follows:

(a) *The Criminal Investigations Division:*

(i) Provides direction and coordination to the investigative regional and field offices concerning projects and investigations;

(ii) Implements guidelines and policies for the detection, investigation, and prevention of fraud and abuse in Department programs, and for the investigation of wrongdoings by grantees or contractors, or by Department employees in the performance of their official duties;

(iii) Identifies systemic and programmatic vulnerabilities in the Department's operations, and makes recommendations for changes in statutes, policies, and procedures;

(iv) Develops investigative techniques and programs and coordinates investigative projects with other OIG components and with other agencies;

(v) Provides programmatic expertise and disseminates information on new programs, procedures, regulations, and statutes to the field offices;

(vi) Reviews completed reports of investigations for accuracy and compliance with Criminal Investigations Division guidelines and policies and disseminates reports to prosecutive agencies' management officials and through the Inspector General to the Secretary;

(vii) Maintains liaison with OPDIVs and STAFF-DIVs, OIG counterparts, and other investigative and law enforcement agencies;

(viii) Assists Assistant Inspector General for Investigations in establishing investigative priorities, supervising and evaluating regional and field offices, and monitoring and reporting on the effectiveness of Division efforts;

(ix) Assists the OIG in responding to congressional inquiries and requests for information made under the Privacy and Freedom of Information Acts;

(x) Provides guidance and direction to investigative regional and field offices in the processing, investigation and disposition of allegations of fraud against all programs administered by the Social Security Administration.

3. Amend section AF.20.D.1.b to read as follows:

(b) *The Civil Fraud Division:*

(i) Investigates or coordinates investigations which result in civil fraud litigation or imposition of a civil money penalty;

(ii) Investigates or coordinates investigations which result in administrative actions against employees, contractors, or grantees for misconduct;

(iii) Investigate or coordinates investigations of allegations of

violations of standards of conduct by Department employees;

(iv) Recommends to the Secretary, OPDIVs and STAFFDIVs, when necessary, consideration of debarment actions aganist contractors and grantees, and personnel actions against employees who have committed wrongful acts against the Department;

(v) Monitors and coordinates administrative sanctions taken by OPDIVs and STAFFDIVs as a result of OIG referrals;

(vi) Maintains liaison with OPDIVs and STAFFDIVs to ensure that appropriate procurement review and action is made on OIG referrals;

(vii) Maintains an index of individuals, corporations and organizations which are prohibited from conducting business with the Department or any of its components;

(viii) Operates the OIG Hotline and receives and evaluates all complaints against HHS employees or programs which have been filed with GAO or other agencies' Hotlines;

(ix) Conducts a Department-wide employee education program regarding availability of the Hotline;

(x) Analyzes patterns or trends which indicate problems developing within OPDIVs and STAFFDIVs and conducts management reviews when necessary.

4. Amend section AF. 20.D.1.c to read as follows:

(c) *The Headquarters Operations Division:*

(i) Directs the administrative functions of the Office of Investigations;

(ii) Develops strategies and techniques to assist state efforts in combating fraud and abuse in DHHS funded programs;

(iii) Provides for the personal protection of the Secretary and other Department officials;

(iv) Develops policy and maintains oversight guidance on matters pertaining to personnel, document, and physical security;

(v) Maintains an automated data and management information system used by Department field investigators;

(vi) Prepares management and statistical reports for the Assistant Inspector General for Investigations;

(vii) Maintains a laboratory facility which provides examination and analysis of questioned documents to establish authorship and authenticity;

(viii) Identifies and evaluates OI professional investigative training needs; and

(ix) Plans, develops, executes schedules and coordinates OI professional investigative training.

5. Amend section AF.20.D.1 by deleting in their entirety subparagraphs (d), (e), (f), and (g) and by redesignating subparagraph (h) as subparagraph (d).

Dated: July 6, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84-18333 Filed 7-16-84; 8:45 am]

BILLING CODE 4150-04-M

National Institutes of Health National Cancer Institute; Meeting; President's Cancer Panel

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the President's Cancer Panel, September 7, 1984, at the San Francisco Airport Hilton, Terrace Room, San Francisco International Airport, San Francisco California 94128.

The entire meeting will be open to the public from 9:00 a.m. to adjournment. Agenda items include reports by the Chairman, President's Cancer Panel, and the Director, National Cancer Institute; and discussions to obtain information regarding centers programs supported by the National Cancer Institute. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of Panel members, upon request.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A23, National Institutes of Health, Bethesda, Maryland 20205 (301/496-1148) will furnish substantive program information.

Dated: July 10, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84-18795 Filed 7-16-84; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Insititute; Cancellation; Clinical Trials Committee Meeting

Notice of the meeting of the Clinical Trials Committee, National Cancer Institute, National Institutes of Health, July 23-25, 1984, published in the Federal Register on June 28, 1984, (49 FR 26638) is hereby cancelled due to some unforeseen circumstances. For further information, please contact Dr. Richard A. Rhoden, Executive Secretary, National Cancer Institute, Westwood Building, Room 804, National Institutes of Health, Bethesda, Maryland 20205 (301/496-7030).

Dated: July 10, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84-18797 Filed 7-16-84; 8:45 am]

BILLING CODE 414-001-M

National Cancer Institute; Meeting; National Cancer Advisory Board Subcommittee on Activities and Agenda

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Cancer Advisory Board Subcommittee on Activities and Agenda, National Cancer Institute, August 8, 1984, Building 31A, Conference Room 3, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205. The entire meeting will be open to the public from 8:30 a.m. to adjournment, to discuss administrative details and plan the agenda and activities for the National Cancer Advisory Board and its meeting for September 1984. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Mrs. Barbara S. Bynum, Executive Secretary, Subcommittee on Activities and Agenda, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health, Building 31, Room 10A03, Bethesda, Maryland 20205, (301) 496-5147, will furnish substantive program information.

Dated: July 10, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84-18791 Filed 7-16-84; 8:45 am]

BILLING CODE 4140-01-M

Laboratory Animal Welfare; Change of Location for Open Hearing on the Proposed PHS Policy on Humane Care and Use of Laboratory Animals

AGENCY: National Institutes of Health.

ACTION: Notice of change of location.

SUMMARY: On May 31, 1984, the National Institutes of Health announced in the Federal Register (49 FR 22711) three open hearings to be conducted on the proposed PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions. The Federal Register notice stated that the hearing to be held August 2, 1984, in Seattle,

Washington, would be held at "Third and Broad Building, 2901 Third Avenue, Room 180." The location of the August 2, 1984, hearing has been changed to the "Jackson Federal Building, South Auditorium, 915 Second Avenue, Seattle, Washington." The hearings to be held on July 19, 1984, in Kansas City, Missouri, and on July 24, 1984, in Boston, Massachusetts, will be held at the locations originally specified in the Federal Register.

ADDRESS: Requests to speak at open hearings or questions concerning the hearings should be directed to Ms. Carol Young, Office for Protection from Research Risks, Building 31, Room 4B09, National Institutes of Health, Bethesda, Maryland 20205. Telephone: (301) 496-7163.

SUPPLEMENTARY INFORMATION: The proposed policy was published for public comment in a special edition in the *NIH Guide for Grants and Contracts*, Vol. 13, No. 5, April 5, 1984. The purpose of the three hearings is to permit interested parties an opportunity to present their comments on the proposed changes and requirements. All hearings will be open to the public subject to the limitation of available space. The schedule for the hearings, including the hearing in Seattle, Washington, is as follows:

July 19, 1984

Federal Office Building, Room 140, 601 East 12th Street, Kansas City, Missouri

July 24, 1984

John F. Kennedy Federal Building, Government Center, Room 2003, Boston, Massachusetts

August 2, 1984

Jackson Federal Building, South Auditorium, 915 Second Avenue, Seattle, Washington

All hearings will convene at 9:00 a.m. Requests to speak will be granted on a first-come first-serve basis. Copies of presentations may be submitted for the record. Oral presentations will be limited to ten minutes. Requests to speak at hearings should be submitted to Ms. Carol Young, Building 31, Room 4B09, National Institutes of Health, Bethesda, Maryland 20205. (301) 496-7163. Written materials of any length may be submitted.

Dated: July 10, 1984

James B. Wyngaarden,
Director, National Institutes of Health.

[FR Doc. 84-18794 Filed 7-16-84; 8:45 am]
BILLING CODE 4140-01-M

Public Health Service

Addendum; National Toxicology Program Board of Scientific Counselors'; Meeting

A brief overview will be given at the meeting on July 27, 1984 (49 FR 26312) Wednesday, June 27, 1984 of the results of the National Toxicology Program (NTP) review of the pathology from the rat portions of two long-term carcinogenesis studies on malathion (CAS No. 121-75-5) and one on malaoxon (CAS No. 1634-78-2) performed by the National Cancer Institute (NCI). The findings were published as technical reports (TRs) by the NCI (malathion, TR #024 and TR #192; malaoxon, TR #135). For further information, contact the Executive Secretary, Dr. Larry G. Hart, telephone (919) 541-3971, FTS 629-3971.

Dated: July 10, 1984.

David P. Rall, M.D., Ph.D.,
Director, National Toxicology Program.

[FR Doc. 84-18793 Filed 7-16-84; 8:45 am]
BILLING CODE 4140-01-M

Health Resources and Services Administration

Health Education Assistance Loan Program; "Maximum Interest Rates for Quarter Ending September 30, 1984"

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools. Section 60.13(a)(4) of the program's implementing regulations (42 CFR Part 60, previously 45 CFR Part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending September 30, 1984, two interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 12⅞ percent. Using the regulatory formula (45 CFR 126.13(a)(2)(3)), in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (10.24 percent), and rounding the result (6.74 percent) upward to the nearest ⅛ percent (13¾ percent). Thus, the variable rate for this 3-month period would normally be at the annual rate of 13¾ percent (6¾ percent plus 7 percent). However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. For the previous 3 quarters the variable interest at the annual rate was as follows: 11⅞ percent for the quarter ending December 30, 1983; 11¾ percent for the quarter ending March 31, 1984; and 12 percent for the quarter ending June 30, 1984. Therefore, in order to maintain an average annual rate of 12 percent for the 12-month period ending September 30, 1984, the variable interest rate for the quarter ending September 30, 1984, would be at an annual rate of 12⅞ percent.

2. For fixed rate loans executed during the period of July 1, 1984, through September 30, 1984, and for variable rate loans executed after January 27, 1981, the interest rate is 13¾ percent. Using the regulatory formula (42 CFR 60.13 (a)(3)), in effect since January 27, 1981, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (10.24 percent); adding 3.50 percent (13.74 percent); and rounding that figures to the next higher one-eighth of 1 percent (13¾ percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: July 10, 1984.

Robert Graham, M.D.,
Administrator, Assistant Surgeon General.

[FR Doc. 84-18859 Filed 7-16-84; 8:45 am]
BILLING CODE 4160-16-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-84-1410]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork

Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarded the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Land Development Mortgage Insurance
Office: Housing
Form No.: FHA-3551
Frequency of Submission: On Occasion
Affected Public: Business or Other For-Profit
Estimated Burden Hours: 550
Status: Extension
Contact: Edwin Baker, HUD, (202) 426-7530, Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 6, 1984.

Dennis F. Geer, Director,

Office of Information Policies and Systems.

[FR Doc. 84-18343 Filed 7-16-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1411]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notce lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Housing Development Grant Application
Office: Housing
Form No.: SF-424, HUD-90031, and HUD-90031A
Frequency of Submission: On Occasion
Affected Public: State or Local Governments
Estimated Burden Hours: 50,400
Status: New
Contact: Frank D. Brown, HUD, (202) 755-5720, Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 6, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-18347 Filed 7-16-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1412]

Submission of Proposed Information Collected to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Managment and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Community Housing Resource Board Program—Periodic Monitoring Report
Office: Fair Housing and Equal Opportunity
Form No. HUD-925
Frequency of Submission: On Occasion
Affected Public: Individuals or Households and Non-Profit Institutions
Estimated Burden Hours: 1,620
Status: New
Contact: Deborah Seabron Dickens, HUD, (202) 755-5992, Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 6, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-18848 Filed 7-16-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1413]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal OMB Desk Officer, Office of Management and Budget New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal. Cost Certification Forms
Office: Housing
Form No.: FHA-2328, FHA-2330A, and FHA-2205
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 8,760
Status: Extension
Contact: Kerry Mulholland, HUD, (202) 426-7113, Robert Neal, OMB (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 6, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-18849 Filed 7-16-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1414]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the

information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Request and Payment for Labels; Manufactured Home Monthly Production Report, Refunds Due Manufacturer, and Adjustment Report
Office: Housing
Form No. NCSBCS-301, 302, 303, and 304.
Frequency of Submission: Bi-Weekly, Monthly, and On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 11,359
Status: Extension
Contact: James McCollom, HUD, (202) 755-6920, Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 6, 1984.

Dennis F. Geer,

Office of Information Policies and Systems.

[FR Doc. 84-18850 Filed 7-16-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1416]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Locality Requests for Section 220 Area Eligibility Determination
Office: Housing
Form No. None
Frequency of Submission: On Occasion
Affected Public: State or Local Governments
Estimated Burden Hours: 100
Status: New
Contact: Doris Stokes, HUD, (202) 426-0070, Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 13, 1984.

Robert F. Fagin,

Deputy Director, Office of Information Policies and Systems.

[FR Doc. 84-18852 Filed 7-16-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1415]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Monthly Report of Excess Income
Office: Housing
Form No.: HUD-93104
Frequency of Submission: Monthly
Affected Public: Businesses or Other For-Profit, Federal Agencies or Employees, and Non-Profit Institutions
Estimated Burden Hours: 27,138
Status: Extension
Contact: William J. Schick, HUD, (202) 755-6870, Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 6, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-18851 Filed 7-16-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1417]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Property Survey Instructions and Certificate
Office: Housing
Form No. FHA-2457
Frequency of Submission: On Occasion
Affected Public: Business or Other For-Profit and Small Businesses or Organizations
Estimated Burden Hours: 1,000
Status: Extension
Contact: Richard E. Murray, HUD, (202) 755-5743, Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)

Dated: July 5, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-18853 Filed 7-16-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1418]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Civil Rights Tenant Characteristics/Occupancy Report
Office: Fair Housing and Equal Opportunity
Form number: HUD-949
Frequency of submission: Annually
Affected public: Businesses or Other For-Profit
Estimated burden hours: 1,353
Status: Extension
Contact: Mary T. George, HUD, (202) 755-5288, Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 6, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-18854 Filed 7-16-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1419]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Summary of Guaranty Agreement Graduated Payment and Growing Equity
Office: Government National Mortgage Association
Form number: HUD-1746, 1748A, 1748B, and 1748C
Frequency of submission: Annually
Affected public: Businesses or Other For-Profit
Estimated burden hours: 4,250
Status: Revision
Contact: Pat Gifford, HUD, (202) 755-5550, Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 6, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-18855 Filed 7-16-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1420]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Recertification of Income and Family Composition—Section 235(j)
Office: Housing
Form No.: HUD-93161
Frequency of submission: On Occasion
Affected public: Individuals or Households
Estimated burden hours: 25
Status: Extension
Contact: Mary Lou Hinchey, HUD, (202) 755-6672, Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 6, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-18856 Filed 7-16-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1421]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION. Notice.

SUMMARY. The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4); how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Public Housing Program—Demolition or Disposition of Public Housing Projects Proposed Rule
Office: Public and Indian Housing
Form number: None
Frequency of submission: On Occasion
Affected public: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Estimated burden hours: 3,000
Status: New
Contact: Wayne Hunter, HUD, (202) 755-6713, Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 6, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-18857 Filed 7-16-84; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-80721]

Airport Leases; Alaska

Notice is hereby given that pursuant to the act of May 24, 1928 (49 U.S.C. 211-214) the State of Alaska, Department of Transportation and Public Facilities, has applied for an airport lease for the following land:

Fairbanks Meridian, Alaska

T. 1 S., R. 33 E., within protracted Section 32, S½SW¼; and protracted Section 33, S½SW¼; and
T. 2 S., R. 33 E., within protracted Section 4, N½N½NW¼; and protracted Section 5, N½N½NW¼.

The purpose of this notice is to inform the public that the filing of this application segregates the described land from all other forms of use or disposal under the public land laws.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1150, Fairbanks, Alaska 99707.

Virginia M. Ezell,

Acting Chief, Branch of Land Office.

[FR Doc. 84-18971 Filed 7-16-84; 8:45 am]

BILLING CODE 4310-84-M

[AA-50379-16]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 Code of Federal Regulations (CFR) 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(h) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611) (ANCSA), will be issued to Chugach Natives, Inc., for approximately 10,607 acres. The lands involved are within the Seward Meridian, Alaska:

T. 3 N., R. 10 E.
T. 4 N., R. 10 E.
T. 3 N., R. 11 E.

The decision to issue conveyance will be published once a week, for four (4) consecutive weeks, in the CORDOVA 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 August 16, 1984, 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 party to be served with a copy of the notice of appeal is: Chugach Natives, Inc., 903 West Northern Lights Boulevard, Suite 201, Anchorage, Alaska 99503.

Barbara Lange,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84-18845 Filed 7-16-84; 8:45 am]

BILLING CODE 4310-JA-M

[F-14857-A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 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 Gwitchyaazhee Corporation, for approximately 0.450 acres. The lands involved are within the Fairbanks, Meridian, Alaska:

T. 20 N., R. 12 E.

The decision to issue conveyance will be published once a week, for four (4) consecutive weeks, in the TUNDRA 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 the 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 this decision by personal service or certified mail, return receipt requested, shall have thirty days from receipt of this 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 this decision by regular mail which is not certified, return receipt requested, shall have until August 16, 1984, to file an appeal.

Any party, known or unknown, who is adversely affected by this 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 appeals. Further information on the manner of and requirements for filing such 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 filed, the parties to be served with a copy of the notice of appeal are:

Chief, Division of Realty, U.S. Fish and Wildlife Service, Alaska Area Office, 1011 East Tudor Road, Anchorage, Alaska 99503

Gwitchyaazhee Corporation, Box 57, Fort Yukon, Alaska 99740

Doyon, Limited, Resource Department, Doyon Building, 201 First Avenue, Fairbanks, Alaska 99701

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84-18844 Filed 7-16-84; 8:45 am]

BILLING CODE 4310-JA-M

[F-14944-A; F-14944-B]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance to Tozitna, Limited, notice of which was published in the Federal Register (48 FR 37087) on August 16, 1983 is modified by redescribing two easements and adding an easement.

Any party, known or unknown, who may claim a property interest which is adversely affected by the decision shall have until August 16, 1984, to file an appeal on the issue in the modified decision. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management office identified below, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E (as revised) shall be deemed to have waived their rights.

Copies of the modified decision can be obtained by contacting the Bureau of Land Management, Alaska State Office, Division of Conveyance Management (960), 701 C Street, Box 13, Anchorage, Alaska 99513.

Except as modified, the decision (notice of which was given August 16, 1983) is final.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84-18843 Filed 7-16-84; 8:45 am]

BILLING CODE 4310-JA-M

[F-14853-B]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14 of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611 (1976)), (ANCSA), will be issued to Hungwitchin Corporation, for approximately 1,795 acres. The lands involved are within T. 2 S., R. 33 E., Fairbanks Meridian, Alaska.

The decision to issue conveyance will be published once a week, for four (4) consecutive weeks, in the TUNDRA 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 Mangement (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 August 16, 1984, 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 Mangement, 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:

Hungwitchin Corporation, Box 85, Eagle, Alaska 99738

Doyon, Limited, Resource Department, Doyon Building, 201 First Avenue, Fairbanks, Alaska 99701

Retained Lands Unit—Easements, Division of Land and Water Management, Alaska Department of Natural Resources, Pouch 7-005, Anchorage, Alaska 99510

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84-18842 Filed 7-16-84; 8:45 am]

BILLING CODE 4310-JA-M

[Serial Numbers AA-53553, AA-53555, AA-53556, AA-53557, AA-53558]

Lease of Public Land; Tenakee Springs, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, FLPMA section 302 lease.

SUMMARY: The following described tract of land has been examined and through land use planning identified as sutiable for lease pursuant to section 302 of the Federal Land Policy and Management Act.

T. 47 S., R. 63 E., Cooper River Meridain, Alaska

U.S. Survey 1409
Mineral Springs Reserve No.1
Mineral Springs Reserve No.2
Mineral Springs Reserve No.3
Mineral Springs Reserve No.4
(Totalling approximately 0.65 acre.)

This Notice of Realty Action proposes long term leases on lands under the jurisdiction of the Bureau of Land Management within four Mineral Springs Reserves at Tenakee Springs, Alaska. The leases are intended to legalize improvements and occupancy of individuals as well as legalize utilization of mineral springs resources by the City of Tenakee Springs. This is a non-competetive authorization of title and improvements in existence for several decades.

This lease action is a non-competitive offering at Fair Market Value to existing holders of titled improvements, and to the City of Tenakee Springs.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action, including the land report and environmental assessment, is available for review at the Anchorage District Office, 4700 East 72nd Avenue, Anchorage, Alaska 99507, or call Don Hinrichsen at (907) 267-1308.

For a period of 45 days from the date of publication of this Notice, interested parties may submit comments at the above address. Any adverse comments will be evaluated by the Anchorage District Manager who may cancel or modify this action and issue a final determination. In the absence of any adverse action by the Anchorage District Manager, this will become the final determination of the Department of the Interior.

Wayne A. Boden,

District Manager.

Mailing List—Notice of Realty Action

Robert A. Pegues, Mayor, City of Tenakee Springs, Alaska, P.O. Box 52, Tenakee Springs, Alaska 99841

Peter Freer, State of Alaska, Department of Community and Regional Affairs, Municipal and Regional Assistance Division, Pouch B, Juneau, Alaska 99811

Postmaster, United States Post Office, Tenakee Springs, Alaska 99841

Rosalia Floresca, P.O. Box 43, Tenakee Springs, Alaska 99841

Richard and Sheila Zagars, 8293 Garnet Street, Juneau, Alaska 99801

Grace Heath, P.O. Box 6, Tenakee Springs, Alaska 99841

Vicki and Ryder Converse, P.O. Box 37, Tenakee Springs, Alaska 99841

D.H. Pegues, General Manager, Snyder Mercantile Company, P.O. Box 505, Tenakee Springs, Alaska 9941

Bill Sheffield, Governor, State of Alaska, Pouch A, Juneau, Alaska 99811

Tom Hawkins, Director, State of Alaska, Department of Natural Resources, Division of Land and Water Management, Pouch 7-005, Anchorage, Alaska 99510

[FR Doc. 84-18801 Filed 7-16-84; 8:45 am]

BILLING CODE 4310-84-M

[R 617, R 697, R 1327, R 1658, R 2231, R 2637, R 3342, S 487, S 567, S 572, S 856, S 857, and S 2577]

California; Termination of Classifications of Public Land for Multiple Use Management

July 10, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has terminated, in their entirety, 13 classifications of public land for multiple use management, affecting a total of approximately 1,174,232 acres within the Bakersfield and California Desert Districts.

FOR FURTHER INFORMATION CONTACT: Dianna Storey, California State Office, (916) 484-4431.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated January 3, 1983, the Bureau of Land Management's classifications for multiple use management, the descriptions of which are contained in the following previously published Federal Register notices, are hereby terminated in their entirety:

Bakersfield District

R 617

32 FR 13874 ((Oct. 5, 1967) FR Doc. 67-11722)

The lands described in the above-referenced document aggregate approximately 3,978 acres in Inyo and Tulare Counties within the South Sierra

Foothills Planning Area and partly in the California Desert Conservation Area (over a broad area near Chimney Peak).

R 1658

32 FR 7516 ((May 14, 1970) FR Doc. 70-5903)

The lands described in the above-referenced document aggregate approximately 143,376 acres in Kern County within the South Sierra Foothills Planning Area and partly in the California Desert Conservation Area (over a broad area near Cache Peak).

R 2231

35 FR 15246 ((Sept. 30, 1970) FR Doc. 70-13037)

The lands described in the above-referenced document aggregate approximately 40,000 acres in Kern, San Luis Obispo, and Santa Barbara Counties within the Coast Valley Planning Area (over a broad area near Caliente Mountain).

R 487

32 FR 12565 ((Aug. 30, 1967) FR Doc. 67-10130)

The lands described in the above-referenced document aggregate approximately 77,241 acres in Tuolumne and Mariposa Counties (located along the western slopes of the Sierra Nevada and west of the Stanislaus National Forest boundary).

S 567

32 FR 13873 ((Oct. 5, 1967) FR Doc. 67-11721)

The lands described in the above-referenced document aggregate approximately 30,932 acres in Amador and Calavares Counties (located along the Consumnes, North fork of the Mokelumne and Tuolumne Rivers, Tiger Creek and several isolated parcels within the two counties).

S 572

32 FR 20660 ((Dec. 21, 1967) FR Doc. 67-14813)

The lands described in the above-referenced document aggregate approximately 21,051 acres in Placer and Eldorado Counties (located west of the Tahoe and Eldorado National Forests).

S 856

32 FR 20988 ((Dec. 29, 1967) FR Doc. 67-15087)

The lands described in the above-referenced document aggregate approximately 13,158 acres in Nevada and Yuba Counties (located south and west of the Plumas and Tahoe National Forests).

S 857

32 FR 20664 ((Dec. 21, 1967) FR Doc. 67-14817)

The lands described in the above-referenced document aggregate approximately 11,400 acres in Santa Clara and Stanislaus Counties (located along the rugged Del Puerto and Coyote Creek drainages in the Diablo Range to the east of Mt. Hamilton in western Stanislaus and eastern Santa Clara Counties).

S 2577.

35 FR 14916 ((Sept. 25, 1970) FR Doc. 70-12795)

The lands described in the above-referenced document aggregated approximately 28,682 acres in Tulare County within the South Sierra Foothills Planning Area (over a broad area near Three Rivers, California).

California Desert District

R 697

32 FR 17896 ((Dec. 14, ,1967) FR Doc. 67-14503)

The lands described in the above-referenced document aggregate approximately 496,588 acres in Mono and Inyo Counties (located in the northern most portion of the California Desert Conservation Area).

R 1327

33 FR 17198 ((Nov. 20, 1968) FR Doc. 68-13905)

The lands described in the above-referenced document aggregate approximately 187,300 acres in Kern and San Bernardino Counties.

R 2637

35 FR 14947 ((Sept. 25, 1970) FR Doc. 70.12796)

The lands described in the above-referenced document aggregate approximately 50,692 acres in Riverside, San Bernardino and San Diego Counties.

R 3342

35 FR 18983 ((Dec. 15, 1970) FR Doc. 70-16788)

The lands described in the above-referenced document aggregate approximately 69,834 acres in San Diego County within the Southern California Metropolitan Project Area (formerly Escondido Project Area) and partly within the Eastern San Diego Planning Units.

1. Land descriptions of each classification are available at the California State Office in Sacramento and respective District Offices.

2. The classification orders segregated the public lands from appropriation under the agricultural land laws (43 U.S.C., Chs. 7 and 9; 25 U.S.C. 334) and from sale under section 2455 of the Revised Statutes (43 U.S.C. 1171); only approximately 23,931 acres were segregated from location under the mining laws. The orders, otherwise, did not segregate from mining and mineral leasing.

3. At 10:00 a.m. on August 20, 1984, the segregative effect imposed by the classifications will terminate.

Inquires concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, Room E-2841, 2800 Cottage Way, Sacramento, California 95825.

Ron Hofman,

Associate State Director.

[FR Doc. 84-18002 Filed 7-16-84; 8:45 am]

BILLING CODE 4310-40-M

[U-8131]

Utah; Termination of Classification for Multiple-Use

1. Pursuant to 35 FR 9564, June 13, 1970, the classification for multiple use U-8131, first printed in the Federal Register, September 24, 1970, Vol. 35, Pages 14859-60, and modified December 16, 1970, Vol. 35, No. 24, Page 19331 and December 16, 1982, Vol. 47, No. 242, page 56407 as they affect the following described lands is hereby terminated:

Salt Lake Meridian, Utah

T. 37 S., R. 18 E.,

All public lands lying in Sections 10, 11, 13, 14, and 15, contained within a strip of land 100 feet wide being 50 feet on each side of a centerline of the Mormon Trail as shown on official maps on file in the Bureau of Land Management, Utah State Office.

2. At 10:00 A.M., on the date of this publication, the lands described in paragraph 1 above will be open to operation of the public lands laws generally subject to valid existing rights, and the requirements of applicable law. All valid applications received at or prior to 10:00 A.M., on the date of this publication, shall be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

3. Inquries concerning these lands should be addressed to the Chief, Branch of Lands & Minerals Operations, Bureau of Land Management, 136 East South Temple, Salt Lake City, Utah 84111.

Dated: July 11, 1984

J. K. Latimer,

Acting Chief, Branch of Lands and Minerals, Operations.

[FR Doc. 84-18820 Filed 7-16-84; 8:45 am]

BILLING CODE 4310-DQ-M

[Group 722]

California; Filing of Plat of Survey

July 9, 1984.

1. These plats of survey of the following described land accepted June 19, 1984, will be officially filed in the California State Office, Sacramento, California, effective at 7:30 A.M. on August 20, 1984:

Humboldt Meridian, Del Norte County, California

T. 11 N., R. 6 E.
T. 11 N., R. 7 E.

2. These plats in seven (7) sheets represent the dependent resurvey of the Second Standard Parallel North, along a portion of the south boundaries of Tps. 11 North, Rs. 6 and 7 E., a portion of the west and north boundaries, and Indian allotment surveys. These plats also represent the survey of the subdivision of sections 20, 29, 30, and 32, and the metes-and-bounds survey of Tracts 47 and 56, and certain rights-of-way boundaries of T. 11 N., R. 6 E., Humboldt Meridian under Group No. 722, California.

3. These plats will become the basic record for describing the land for all authorized purposes at and after 7:30 A.M. of the above date. Until this date and time, the plats have been placed in the open files and are available to the public for information only.

4. This survey was executed to meet certain administrative needs of the U.S. Forest Service and this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 84-18804 Filed 7-16-84; 8:45 am]

BILLING CODE 4310-40-M

[C-12-84; C-16-84]

California; Filing of Plat of Survey

July 8, 1984.

1. These supplemental plats of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernardino Meridian, San Bernardino and Imperial Counties, California

T. 3 N., R. 13 E.
T. 16 S., R. 12 E.

2. These supplemental plats of the SE¼ of Section 33, T. 3 N., R. 13 E., Mount Diablo Meridian, and amended lottings of Tract 63, T. 16 S., R. 12 E., San Bernardino Meridian, California, were accepted June 11, 1984.

3. These plats will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

4. These supplemental plats were executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 84-18803 Filed 7-16-84; 8:45 am]

BILLING CODE 4310-40-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 6, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20243. Written comments should be submitted by August 1, 1984.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Calaveras County

San Andreas, *Snyder, John J., House,* 247 W. St. Charles St.

COLORADO

Gunnison County

Gunnison vicinity, *Curecanti Archeological District,* W of Gunnison

CONNECTICUT

Fairfield County

Bidgeport, *St. John's Episcopal Church,* 768 Fairfield Ave.

Hartford County

Glastonbury, *Glastonbury Historic District,* Roughly Main St. from Hebron Ave. to Talcott Rd.

Hartford, *St. Paul's Methodist Episcopal Church,* 1886-1906 Park St.

Middlesex County

Deep River, *Pratt, Read and Company Factory Complex,* Main St. between Bridge and Spring Sts. and 5 Bridge St.

GEORGIA

Chatham County

Savannah, *St. Philip A.M.E. Church, 613 W. Broad St.*

KENTUCKY

Knox County

Barbourville, *Barbourville Commercial District,* Roughly bounded by Daniel Boone Dr., Liberty, High and Jail Sts.

Meade County

Brandenburg, *Brandenburg Methodist Episcopal Church (Brandenburg MRA),* 215 Broadway

Brandenburg, *Goff-Baskett House (Brandenburg MRA),* 550 Lawrence St.

Brandenburg, *Jones-Willis House (Brandenburg MRA),* 321 Main St.

Brandenburg, *Meade County Office-Rankin House (Brandenburg MRA),* 205 Lafayette St.

Brandenburg, *Meade County Jail (Brandenburg MRA),* 125 Main St.

Brandenburg, *Richardson House (Brandenburg MRA),* 547 Lawrence St.

Brandenburg, *Yeakel, Edward, House (Brandenburg MRA),* 116 Decatur St.

Pulaski County

Bronston vicinity, *Newell, William, House (Pulaski County MRA),* Off KY 90

Bronston, *Beatty-Newell House (Pulaski County MRA), Off KY 90*

Bronston, *Bronston Post Office (Pulaski County M R A),* KY 790

Burnside, *Boland House (Pulaski County M R A),* Lakeshore Dr.

Burnside, *Burnside Historic District (Pulaski County M R A),* Lakeshore Dr. and French Ave.

Burnside, *Burnside Lodge (Pulaski County M R A),* Off U.S. 27

Burnside, *Burnside Methodist Church (Pulaski County MRA),* Off U.S. 27

Dabney, *Dabney Post Office (Pulaski County MRA),* KY 39

Eubank, *Payne House (Pulaski County MRA),* Off SR 1247

Eubank, *Payne Mill (Pulaski County MRA),* Off SR 1247

Shopville vicinity, *Evans House (Pulaski County MRA),* KY 461

Shopville, *James-Hansford House (Pulaski County MRA),* On KY 80

Shopville, *James-Owens House (Pulaski County MRA),* Off KY 80

Somerset vicinity, *Buck-Mercer House (Pulaski County MRA),* Waynesburg Rd.

Somerset vicinity, *Pisgah Presbyterian Church (Pulaski County MRA),* Off U.S. 27

Somerset vicinity, *Saunders House (Pulaski County MRA)*, Off U.S. 27
Somerset, *City Hall (Pulaski County MRA)*, 400 E. Mt. Vernon St.
Somerset, *Crawford House (Pulaski County MRA)*, 121 Maple St.
Somerset, *Harvey's Hill Historic District (Pulaski County MRA)*, 401—527 N. Main St., and 402—526 N. Main St.
Somerset, *Hotel Beecher (Pulaski County MRA)*, 203 S. Main St.
Somerset, *Morrow House (Pulaski County MRA)*, 208 E. Oak St.
Somerset, *North Main Street Historic District (Pulaski County MRA)*, N. Main and Columbia Sts.
Somerset, *Richardson House (Pulaski County MRA)*, 206 N. Vine St.
Somerset, *Robinson Mill (Pulaski County MRA)*, S. Main St.
Somerset, *Scott, Dill, House (Pulaski County MRA)*, 209 N. Main St.
Somerset, *Smith House (Pulaski County MRA)*, 200 N. College St.
Somerset, *Smith, Beecher, House (Pulaski County MRA)*, 405 College St.
Somerset, *South Courthouse Square Historic District (Pulaski County MRA)*, Public Sq., Zachary Way, W. Mt. Vernon, S. Main, and S. Maple Sts.
Somerset, *Waddle-Prather House (Pulaski County MRA)*, 311 N. College St.
Somerset, *West Columbia Street District (Pulaski County MRA)*, 201—303 W. Columbia St.
Somerset, *Withers House (Pulaski County MRA)*, 116 Maple St.

LOUISIANA

Ascension Parish

Prairieville, *Kraemer House*, Off U.S. 61

Jackson Parish

Chatham vicinity, *Brooklyn Church and Cemetery*, SE of Chatham off LA 4

MASSACHUSETTS

Essex County

Newburyport, *Newburyport Historic District*, Roughly bounded by Merrimack River, Plummer Ave., Marlboro, Parker, State and High Sts.

MISSISSIPPI

Hinds County

Terry, *Jones, Dudley, House*, 115 Railroad Ave.

Warren County

Vicksburg, *Craig-Flowers House*, 2011 Cherry St.

MONTANA

Beaverhead County

Wisdom vicinity, *Big Hole National Battlefield*, W of Wisdom on MT 43

Cascade County

Cascade vicinity, *St. Peter's Mission Church and Cemetery*, W of Cascade
Great Falls, *Margaret Block*, 413–415 Central Ave.

Madison County

Twin Bridges, *Madison County Fairgrounds*, MT 41

Missoula County

Missoula, *Johnston, John S., House*, 412 W. Alder St.

Stillwater County

Absarokee, *Hovda, Oliver H., House*, N. Woodward St.

NEW JERSEY

Somerset County

Griggstown, *Griggstown Historic District*, Roughly Canal Rd. from Old Georgetown Rd. to Ten Mile Run

PUERTO RICO

Aguadilla County

Hatillo vincinity, *Hacienda Santa Rosa*, PR 2

SOUTH CAROLINA

Charleston County

Charleston, *Charleston Historic District (Boundary Increase)*, King and Calhoun Sts.

Greenwood County

Greenwood, *Lander College Old Main Building*, Stanley Ave. and Lander St.

Horry County

Conway, *Burroughs School*, 801 Main St.

Lancaster County

Lancaster, *Lancaster Downtown Historic District*, S. Main, Gay, and Catawba Sts.

TEXAS

Dimmit County

Carrizo Springs, *Dimmit County Courthouse*, Public Square

Harris County

Houston, *Sheridan Apartments*, 802–804 McGowen St.

Tarrant County

Arlington, *Hutcheson-Smith House*, 312 N. Oak St.

[FR Doc. 84-18337 Filed 7-16-84; 8:45 am]
BILLING CODE 4310-70-M

Kalaupapa National Historical Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Kalaupapa National Historical Park Advisory Commission will be held at 10:00 a.m. on Thursday, September 13, 1984, at Paschoal Community Hall, Kalaupapa, Molokai, Hawaii.

The Advisory Commission was established by Pub. L. 95–565 to provide advice with respect to park development, operations, public visitation, and employee training.

Members of the Commission are as follows:

Rev. David K. Kaupu, Chairman
Mr. Clifford K. Anderson
Mr. Robert L. Barrel
Mrs. Kuulei Bell
Mr. James Brede
Mr. Shoichi Hamai
Mr. Paul Harada
Mr. Isaac Keao
Mr. Richard Marks
Mr. Ralston Nagata
Mr. Bernard Punikaia

This meeting will be devoted to review of the Park's Cultural Resource Plan, the Wayside Exhibit Plan, and National Park Service employee housing.

The meetings are open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact Mr. Bryan Harry, Pacific Area Director, National Park Service, 300 Ala Moana Boulevard, Box 50165, Honolulu, Hawaii, 96850; telephone (808) 546–7584.

Minutes of the meeting will be available for public inspection by December 1, 1984, in the Office of the Pacific Area Director, National Park Service, 300 Ala Moana Boulevard, Room 6305, Honolulu, Hawaii.

Dated: July 6, 1984.

Howard H. Chapman,
Regional Director, Western Region.

[FR Doc. 84-18338 Filed 7-16-84; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[I.C.C. Order No. P-76]

Passenger Train Operation

To: The Atchison, Topeka and Santa Fe Railway Company.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Chicago, Illinois and Kansas City, Missouri. The operation of these trains requires the use of the tracks and other facilities of Burlington Northern Railroad Company (BN). A portion of the BN tracks near Aurora, Illinois, are temporarily out of service because of a derailment. An alternate route is available via The Atchison, Topeka and Santa Fe Railway Company between Chicago and Galesburg, Illinois.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are

impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission served April 29, 1982, and of the authority vested in the Commission by Section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), The Atchison, Topeka and Santa Fe Railway Company (ATSF) is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Chicago, Illinois, and a connection with Burlington Northern Railroad Company at Galesburg, Illinois.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 6:16 a.m. (EDT), June 26, 1984.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m. (EDT), June 26, 1984, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon The Atchison, Topeka and Santa Fe Railway Company and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington D.C., June 26, 1984.

Interstate Commerce Commission.

John H. O'Brien,

Agent.

[FR Doc. 84-18841 Filed 7-16-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52 (Sub-Nov. 28)]

The Atchison, Topeka and Santa Fe Railway Company; Abandonment in Yavapai County, AZ; Findings

The Commission has issued a certificate authorizing the Atchison, Topeka and Santa Fe Railway Company to abandon its 28.22 mile rail line between Abra (milepost 29.1) and Prescott, at the end of the line (milepost 57.32) in Yavapai County, AZ. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 84-18839 Filed 7-16-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30497]

Green Mountain Railroad Corp.; Discontinuance Exemption in Windham County, VT and Cheshire County, NH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts the discontinuance of service by Green Mountain Railroad Corporation over 8.57-mile and 21.75-mile segments of rail line in Windham County, VT and Cheshire County, NH from the requirement of prior approval under 49 U.S.C. 10903 *et seq.*, subject to employee protection conditions.

DATES: This exemption shall be effective on August 16, 1984. Petitions to stay must be filed by July 27, 1984, and petitions for reconsideration must be filed by August 6, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30425 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representative, Andrew P. Goldstein, 706 Ring Building, 1200 Eighteenth Street, NW., Washington, DC 20036

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. Info Systems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: July 10, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

[FR Doc. 84-18840 Filed 7-16-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

National Institute of Justice

[BAC 441018]

Solicitation; Graduate Research Fellowships; Announcement of a Competitive Research Grant Program

The National Institute of Justice announces a competitive Graduate Research Fellowship Program which will provide a limited number of Fellowships to doctoral candidates, engaged in the preparation of a dissertation in policy relevant areas of criminal justice. Applicants must have completed all degree requirements except for research, writing and defense of the dissertation prior to awarding of the grant.

There will be two cycles of the Graduate Research Fellowship program during Fiscal Year 1985. Submissions postmarked on or before November 1, 1984 will be considered submissions to the first cycle, and those postmarked after November 1, 1984 and on or before March 1, 1985 will be considered submissions to the second cycle. A number of grants will be awarded through the doctoral candidates institution which must indicate support of the application. The maximum award for each grant is $11,000, which provides a stipend for the student, allowance for dependents, major project costs and certain university fees.

Additional information and copies of the announcement may be obtained by

sending a self-addressed mailing label to: Solicitation—Graduate Research Fellowship Program, National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850.

Dated: June 29, 1984.

James K. Stewart,

Director, National Institute of Justice.

[FR Doc. 84-18798 Filed 7-16-84; 8:45 am]

BILLING CODE 4410-18-M

Office of the Secretary

Minor Modification in Consent Decree and Court Order Pursuant to Clean Air Act; Commonwealth of Pennsylvania, et. al.

Notice is hereby given that on June 25, 1984 a stipulation was approved and entered by the court in *United States* v. *Commonwealth of Pennsylvania, et al.*, No. 77-0619 (E.D. Pa.), modifying the August 30, 1978 consent decree and the June 16, 1981 court order in this case. The consent decree and subsequent court orders required Pennsylvania to implement an automobile emissions inspection and maintenance program by June 1, 1984 in accordance with the requirements of the Clean Air Act. The June 25, 1984 stipulation modifies some minor features of that program by requiring quarteryl inspections of emissions analyzer equipment instead of monthly inspections, and by providing for optional rather than mandatory maintenance contracts to accompany the sale of emissions analyzer equipment to the service stations performing inspections.

F. Henry Habicht, II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-18823 Filed 7-16-84; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background.

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Women's Bureau
Women in Apprenticeship (WIA) Workshop Participant Survey Questionnaire
One-time survey
Individuals or households; State or local governments; businesses or other for-profit; federal agencies or employees; non-profit institutions
675 responses; 169 hours; 1 form.

The survey is needed to provide the data necessary to evaluate the effect of the Women in Apprenticeship workshops on participants' efforts to support the entry of women into apprenticeable and other jobs that are nontraditional for women. The affected public is government agencies, businesses and non-profit organizations.

Extension

Employment and Training Administration
Annual Distribution of claimants by Earnings
1205-0021; ES 206
Annually
State or local governments
53 responses; 159 hours; 1 form.

This report provides a base to estimate the cost effect of alternative formulas for weekly benefit amounts, duration and eligibility with respect to benefit adequacy.

Signed at Washington, D.C., this 12th day of July 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84-18870 Filed 7-16-84; 8:45 am]

BILLING CODE 4510-23, 4510-30-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period July 2, 1984-July 6, 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not

contribute importantly to worker separations at the firm.

TA-W-15,140; Alten Foundry & Machine Works, Inc., Lancaster, OH

TA-W-15,170; N.J. Ladies' Coats Co., Inc., Newark, NJ

TA-W-15,113; Prime Split Corp., Newburyport, MA

TA-W-15,014; McGraw Edison Co., Power Systems Group, Canonsburg, PA

Affirmative Determinations

TA-W-15,162; United States Metals Refining Co., Carteret, NJ

A certification was issued covering all workers separated on or after January 1, 1983.

TA-W-15,101; Standard Steel Specialty Co., Hammond, IN

A certification was issued covering all workers separated on or after October 31, 1982 and before December 31, 1983.

TA-W-15,130; Somersworth, Inc., Somersworth, NH

A certification was issued covering all workers separated on or after January 1, 1984.

TA-W-15,131; Somersworth Shoe Co., Somersworth, NH

A certification was issued covering all workers separated on or after January 1, 1984.

TA-W-15,132; Somersworth Wood Heel Co., Somersworth, NH

A certification was issued covering all workers separated on or after January 1, 1984.

TA-W-15,139; Waukesha Bearing Corp., Waukesha, WI

A certification was issued covering all workers separated on or after December 5, 1982 and before April 30, 1984.

TA-W-15,181; Corning Class Works, Blacksburg, VA

A certification was issued covering all workers separated on or after January 10, 1983.

TA-W-15,184; Springfield Machine & Stamping, Inc., E & R Packaging, Inc., Warren, MI

A certification was issued covering all workers separated on or after June 1, 1983 and before May 1, 1984.

TA-W-15,154; Spalding, Inc., Division of Questor, Chicopee, MA

A certification was issued covering all workers engaged in employment related to the production of basketballs separated on or after December 22, 1982 and before February 29, 1984.

A certification was issued covering all workers engaged in employment related to the production of wood golf club heads separated on or after November 1, 1983 and before December 31, 1983.

TA-W-15,163; United States Steel Corp., Braddock Basic Oxygen Processing Plant (BOP Shop), Braddock Foundry, Braddock, PA

A certification was issued covering all workers of the Braddock Foundry separated on or after June 30, 1983.

I hereby certify that the aforementioned determinations were issued during the period July 2, 1984–July 6, 1984. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 10, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-18376 Filed 7-16-84; 8:45 am]

BILLING CODE 4510-30-M

Office of Pension and Welfare Benefit Programs

[Application No. D-4637 et al.]

Proposed Exemptions; Criterion Investments et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested person are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All writtern comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Consititution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975 (c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications of file with the Department for a complete statement of the facts and representations.

Criterion Investments Located in Houston, Texas

[Application No. D-4637]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Section I. Exemption for Certain Transactions Involving the Purchase of Interests in Criterion II (the Partnership)

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the purchase of interests in the Partnership by employee benefit plans

(Participating Plans), if the general conditions set forth in Section II are met, and if:

1. Each purchase of interests in the Partnership by a Participating Plan is authorized in writing by a fiduciary (the Independent Fiduciary) of each Participating Plan who is independent of the Applicants [1] and their affiliates.[2] If such Independent Fiduciary directs that assets then under management by any of the Applicants be invested in the Partnership, such written authorization by the Independent Fiduciary shall specify such fact and the manner in which such assets shall be transferred to the Partnership.

2. No Applicant and no officer, director or general partner of the Applicants or of the Partnership may acquire or hold any securities of any company whose securities the Partnership holds.

3. The terms and conditions of the partnership agreement (the Partnership Agreement) at the formation of the Partnership and at the time of any purchase of an interest covered by this exemption shall be no less favorable to the Participating Plans than the terms and conditions available in arm's-length transactions between unrelated parties.

4. Prior to accepting any investment of assets in the Partnership by a Participating Plan, the Applicants shall furnish or cause to be furnished to each Independent Fiduciary authorizing such investment a copy of this exemption, the Partnership Agreement, a private placement memorandum which describes the respective rights of the general and limited partners to distributions and capital appreciation, services to be performed by the general partner and the compensation payable therefor, all other material rights and obligations of the partners, and such other information as requested by the Independent Fiduciary.

5. A Participating Plan shall not, after the date of investment of Plan assets in the Partnership, pay to any of the Applicants a separate investment management fee or similar fee with respect to the Participating Plan's assets invested in the Partnership.[3] If a Participating Plan invests in the Partnership during any period for which the Plan has prepaid to any of the Applicants an investment management or similar fee, the amount of such fee will be returned to the Participating Plan. This condition shall not preclude payment by the Partnership to any of the Applicants of expenses and allocations provided in the Partnership Agreement.

6. No sales commissions or similar fees will be charged by the Applicants to any Participating Plan with respect to its investment in the Partnership. No redemption fee or other penalty shall be charged by the Applicants to any Participating Plan which transfers all or a portion of its Partnership interest as permitted by the Partnership Agreement, except that a Participating Plan must compensate the Partnership for reasonable fees and expenses incurred by the Partnership in its efforts to locate a suitable purchaser for the Participating Plan's Partnership interest.

7. The Partnership Agreement will require that limited partners receive audited annual financial statements with respect to the Partnership as well as such other information as the limited partner (or a Participating Plan's Independent Fiduciary) may reasonably request concerning the operations and investments of the Partnership.

8. No Participating Plan may invest more than 10% of its assets in the Partnership.

Section II. General Conditions

(a) The Applicants maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section II to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred it, due to circumstances beyond the control of the Applicants, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in section (2) of this paragraph (b) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (a) of this Section II are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Partnership of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan or any duly authorized employee or representative of such participant or beneficiary.

(b)(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (b) shall be authorized to examine trade secrets of the Applicants, or commercial or financial information which is privileged or confidential.

Section III. Definitions and General Rules

For the purposes of this exemption,

(a) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(d) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Partnership as its proportionate interest in the total assets of the Partnership as calculated on the most recent preceding valuation date of the Partnership.

Summary of Facts and Representations

1. The Applicants are CVP Management Partnership II (CVP II), Harvard H. Hill, Jr. (Mr. Hill), David O. Wicks, Jr. (Mr. Wicks), Gregory A. Rider (Mr. Rider), Criterion Group, Inc. (Criterion Group) and two of its three wholly-owned subsidiaries, Criterion Investment Management Company (Management) and Criterion Investments, Inc. (Criterion Investments). CVP II is a Texas general partnership composed of Criterion Investments, Mr. Hill, Mr. Wicks and Mr. Rider. Management is registered as

[1] See representation 1 in the Summary of Facts and Representations.

[2] All future references to the Applicants will also include affiliates of the Applicants.

[3] This condition shall not preclude the payment by the Participating Plans to the Applicants of investment management or other fees with respect to assets not invested in the Partnership.

an investment adviser under the Investment Advisers Act of 1940. It serves as investment manager for pension plans and numerous other entities. Criterion Investments is a recently formed subsidiary of Criterion Group which acts as a general partner of venture capital limited partnerships. Mr. Hill, Mr. Wicks and Mr. Rider are all officers of Criterion Investments.

2. CVP II will act as general partner of the Partnership, which is a venture capital limited partnership.[4] The Partnership is organized for the purpose of making venture capital investments which shall include but not be limited to buying and selling securities. The Partnership shall be engaged primarily in the business of investing in securities of emerging and development stage companies (portfolio companies) and will participate in the management of such companies. The Partnership will commence on the date the certificate of limited partnership is recorded and will continue until 1994; however, CVP II with limited partner consent may terminate the Partnership at any time.

3. Limited partnership interests in the Partnership will be offered to public pension plans maintained for employees of state, county and city governments, corporations, insurance companies, other institutional investors and certain wealthy and sophisticated individuals. Limited partnership interests in the Partnership will also be offered to pension and profit sharing plans which are qualified under section 401 and 501 of the Code (Participating Plans). [5]

CVP II anticipates that as many as 25 limited partners will invest a minimum of $1 million in the Partnership with an aggregate offering amount of between $40 million and $70 million. As general partner, CVP II will contribute percent of the total Partnership capitalization. A maximum of 10 percent of the assets of any one Participating Plan may be invested in the Partnership. The Partnership will maintain a capital account for each partner which will consist of such partner's capital contribution and the portion of Partnership profits and losses allocated to such account.

4. Limited partnership interests in the Partnership will be offerd pursuant to the securities registration exemption provided by Regulation D promulgated under the Securities Act of 1933. No sales commissions will be charged to Participating Plans in connection with the purchase or sale of interests in the Partnership. The Participating Plans will not be charged a redemption fee in connection with the sale by a Participating Plan to the Partnership of interests in the Partnership. None of the Applicants will charge a Participating Plan any investment management fee or similar fee with respect to the Participating Plan's assets invested in the Partnership for the entire period of the investment, although the Partnership will pay CVP II an annual management fee of 2.5 percent (.625 percent paid quarterly) of the total capital contributions to the Partnership and certain other fees and allocations of income and gain, pursuant to the Partnership Agreement.

5. Each limited partner shall share in the profits and losses of the Partnership allocated to the limited partners, in the proportion that its capital contributions bear to the total capital contributions of all such limited partners.

With respect to the allocation between limited partners and CVP II, the Applicants represent that the gain from net ordinary income and net capital gains, or losses from net ordinary loss and net capital loss [6] of the Partnership for each fiscal year shall be allocated as of the end of such fiscal year 80% to the limited partners as a group and 20% to CVP II; provided, however, that any deduction resulting from the amortization of organization expenses shall be allocated to the partners in proportion to the partners' capital contribution.

If the allocations of net ordinary loss and net capital loss would result in the allocation of a loss that reduces the capital accounts of the partners, then said loss shall first be allocated as provided above until CVP II's capital account is reduced to zero. Thereafter, 99% of the remaining loss shall be allocated to the limited partners and 1% shall be allocated to CVP II (Special Loss Allocations). If Special Loss Allocations have been made, then 99% of the net ordinary income and net capital gains shall be allocated to the limited partners and 1% shall be allocated to CVP II until their respective capital accounts have been restored to an amount equal to their balance when the Special Loss Allocation was begun. After they have been restored, all net ordinary income and net capital gains shall again be allocated as stated above.[7]

The limited partners shall have no personal obligation for the debts or liabilities of the Partnership, except that each limited partner shall be obligated to pay its capital contribution. No limited partner shall be liable for the debts or liabilities of any other partner.

6. The Partnership and other partnerships established by the Applicants may have assets available for investment at the same time. The Applicants represent that opportunities for investment in securities of portfolio companies will be allocated by CVP II to the Partnership and other partnerships established by the Applicants, in an equitable manner, without preference given to any partnership. However, the Partnership, as will other partnerships established by the Applicants, will have a preferential right to make "follow-on" investments in its existing portfolio companies which require additional capitalization. If the follow-on investment amount required is in excess of what the Partnership or other partnerships established by the Applicants desire to invest, the other partnerships will be invited to participate in the investment. All such investments offered to partnerships will be allocated pro rata, to the extent of each partnership's available capital. The right to make preferential follow-on investments is represented to be common in venture capital financing.

7. Prior to any investment in the Partnership, an independent fiduciary (the Independent Fiduciary) of each Participating Plan will receive a private placement memorandum (the Memorandum) which discloses the nature of the offering, capitalization of the Partnership, the estimated use of proceeds of the offering, the investment objectives and policies of the Partnership, the profits and cash flow distributions to be made to partners, the compensation of CVP II, the federal tax consequences of an investment in the Partnership, a summary of the Partnership agreement, and any additional material information

[4] CVP II will also act as general partner to other venture capital limited partnerships. The Department in this proposed exemption is not providing relief for other partnerships established by the Applicants; however, the Applicants may apply for additional relief for such partnerships.

[5] Applicants represent that Participating Plans will typically have assets in excess of $250 million.

[6] Net capital gains means capital gain net income as defined in section 1222(9) of the Internal Revenue Code of 1954 as amended (the "Internal Revenue Code"). For purposes of this Agreement, any loss on stock of a Small Business Investment Company shall be treated as a capital loss which reduces capital gains, section 1242 of the Internal Revenue code notwithstanding.

Net capital loss means the excess of losses from sales or exchanges of capital assets over gains from such sales and exchanges.

Net ordinary income means gross ordinary income (which includes all gross income other than capital gains) reduced by operating expenses.

Net ordinary loss means the excess of operating expenses over gross ordinary income.

[7] This proposed exemption does not address the method and receipt of compensation by the Applicants.

necessary or appropriate to fulfill the requirements for full and fair disclosure under the federal and state securities laws applicable to such an offering.

8. Applicants believe that since they are parties in interest with respect to Participating Plans by virtue of serving as investment managers or service providers to such Plans, it may constitute a prohibited transaction for Participating Plans to invest in the Partnership because the Applicants may derive an economic benefit from compensation and fees received by CVP II. The Applicants also represent that they will not accept subscriptions for interests in the Partnerships from Plans for which they are presently acting as an investment adviser as distinguished from an investment manager within the meaning of section 3(38) of the Act. Accordingly, Applicants request an exemption from section 406(a) of the Act and section 4975(c)(1) (A) through (D) of the Code to permit Participating Plans to invest in the Partnership.[8] The decision to invest in the Partnership will, in each instance, be made by a fiduciary of a Participating Plan, who is independent of the Applicants and who has discretionary authority to make investment allocation decisions regarding the portfolio of the Plan.

For Further Information Contact: Mr. Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Operating Engineers Pension Trust (the Plan) Located in Los Angeles, California

[Application No. D-5320]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply, effective October 1, 1981, to the lease of office space by the Plan to Wayne Jett, a sole proprietor now doing business as Jett, Clifford & Lacquer, formerly Wayne Jett, Lawyers (Jett), under the terms described in this notice of proposed exemption, provided such terms are not less favorable to the Plan than those obtainable in an arm's-length transaction with unrelated parties.

Effective Date: If the proposed exemption is granted, it will be effective october 1, 1981.

Summary of Facts and Representations

1. The Plan is a pension plan with approximately 28,760 participants. The Plan presently has assets valued at $552,704,659, including real estate investments of $93,600,000.

2. The Plan owns a twelve story office building known as "Wilshire Centre" located at 3055 Wilshire Boulevard, Los Angeles, California. Wilshire Centre was built in 1973. As of June 30, 1983, the cost to the Plan of the Wilshire Centre land and building was $9,565,516, net of accumulated depreciation of $2,340,871, and the current appraised value was $25,500,000. The Wilshire Centre building has approximately 183,609 square feet of rentable space.

3. Jett has been legal counsel to the Plan since March, 1972, and as such is a party in interest under the Act. The applicant represents that Wayne Jett and the lawyers working for Jett are not fiduciaries with respect to the Plan under the Act. Jett has leased office space in the Wilshire Centre building since January 1, 1974. The original lease agreement was executed on behalf of the Plan by First Western Bank & Trust Company, corporate co-trustee. This lease was for 1,861 square feet of space on the fourth floor and had a term of five years. The monthly rent under the original lease was $1,097.99 or $.59 per square foot. This rental rate was subject to a yearly adjustment based upon increased expenses of maintenance and operation of the building.

4. On October 31, 1977, an addendum to the lease agreement was entered between Lloyds Bank California (formerly First Western Bank & Trust Company) and Jett reflecting an exercise by Jett of an express option to lease adjoining office space. An additional 506 square feet was leased pursuant to this addendum and the monthly rent was increased to $1,584.91.

5. The lease was further extended on September 15, 1978, January 8, 1980, December 11, 1980 and October 1, 1981. Each of these extensions provided for an increase in rent commensurate with the then market rate as determined by the Plan and its commercial leasing agent. Pursuant to the extension dated October 1, 1981, an additional 2,511 square feet of space immediately adjoining the leased space was covered by the lease. This extension will expire on June 30, 1984. Under the most recent extension, the monthly rent became $6,910 or $1.41 per square foot, subject to adjustment for operating expenses of the building. Jett's lease covers approximately 4,878 square feet, which represents 2.66% of the total square footage in the building.[9]

6. The proposed lease extension would have a term of July 1, 1984 through June 30, 1987, with Jett having an option to renew for an additional 5 years at the present terms, except that the rental rate would be adjusted to reflect the then fair market value of the space, subject to the right of another tenant in the building to acquire the space at the end of the three year term. The proposed extension provides for a monthly rental of $7,804.80 or $1.60 per square foot, subject to yearly adjustments for operating expenses pursuant to the terms of the original lease.

7. The original lease agreement between the Plan and Jett was made by the Plan based upon the advice of Daniel P. Hayes, then of the Charles Dunn Company, exclusive leasing agent for Wilshire Centre. Mr. Hayes, who now is a principal of Hayes and Company, provides real estate leasing and brokerage services to the Plan with respect to Wilshire Centre and other commercial office building properties. Mr. Hayes regularly advises the Plan regarding market rental rates and lease terms, and represents the Plan in negotiations with tenants and prospective tenants. In view of the party in interest relationship between the Plan and Jett, the commercial leasing agent has assisted the Plan in designing the lease and each extension to be consistent with leases for comparable space in Wilshire Centre at the fair market rental value of the office space. Mr. Hayes represents that the terms of the lease and the proposed extension are at least as favorable to the Plan as in an arm's-length transaction with an unrelated party and were purposely structured to meet that criterion.

8. The trustees of the Plan have concluded that this transaction would be in the best interests of the Plan and

[8] To the extent that, in the ordinary course of business, the Applicants are deemed to be fiduciaries by reason of rendering "investment advice" to a plan within the meaning of regulation 29 CFR 2510.3-21(c)(1)(ii)(B), the presence of an unrelated second fiduciary acting on the investment adviser's recommendation to invest in an Applicant sponsored partnership is not sufficient to insulate the Applicants from fiduciary liability under section 406(b) of the Act. (*See* Advisory Opinions 84-03A and 84-04A, issued by the Department on January 4, 1984.) This proposed exemption provides no relief from any of the restrictions of section 406(b) either at the time of a plan's investment or during the operation of the Partnership.

[9] The applicant represents that the original lease and the extensions thereof prior to October 1, 1981 were covered by sections 414(c)(2) and 2003(c)(2)(B) of the Act. The Department expresses no opinion in this proposed exemption as to whether the original lease and the extensions thereof prior to October 1, 1981 were exempt by reason of sections 414(c)(2) and 2003(c)(2)(B) of the Act.

its participants and beneficiaries. None of the trustees has any ownership or economic interest in the transaction other than that interest imposed on them by the Act as Plan fiduciaries. Jett's performance of all obligations under the proposed lease extension will be assured, as in the past, by the qualified administrative staff of the Plan responsible for administering all such leases of Plan office space. Jett has been responsible in the performance of his lease obligations for more than 10 years.

9. In summary, the applicant represents that the proposed transaction meets the criteria of section 408(a) of the Act because: (1) The leased office space represents only 2.66% of the total square footage of the building; (2) the building represents about 4% of the Plan's assets; (3) the lease terms were established by an independent commercial leasing agent to reflect a rental rate consistent with the fair market value of the office space; (4) the Plan's trustees have determined that the proposed transaction is in the Plan's best interest and is appropriate for the Plan; and (5) the Plan's trustees will monitor the lease and will take whatever action is necessary to enforce the Plan's rights.

Notice to Interested Persons: Within 30 days of the publication of this proposed exemption in the Federal Register, notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department. Comments are due within 60 days of the date of publication.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not believe a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 12th day of July, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-18903 Filed 7-16-84; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 84-98; Exemption Application No. D-4624 et al.]

Grant of Individual Exemptions; Western Printing Inc. et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Western Printing Inc. Profit Sharing Retirement Plan and Trust (the Plan) Located in San Francisco, California

[Prohibited Transactions Exemption 84-98; Exemption Application No. D-4624]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan (the Loan) by the Plan of $80,000 to 777 Tennessee Street Partnership, provided the terms and conditions of the Loan are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 11, 1984 at 49 FR 20085.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

American Savings Pension Plan and American Savings Profit Sharing Plan (the Plans) Located in Salt Lake City, Utah

[Prohibited Transaction Exemption 84-99; Exemption Application Nos. D-4712 and D-4713, respectively]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective February 3, 1981, to certain interest-bearing loans to the Plans from American Savings & Loan Association, a party in interest to the Plans.

Effective Date: The exemption is effective February 3, 1981.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 25, 1984 at 49 FR 22149.

For Further Information Contact: Mrs. Mary Jo Fite of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Pezrow Companies Profit Sharing Plan (the Plan) Located in Montvale, New Jersey

[Prohibited Transaction Exemption 84-100; Exemption Application No. D-4914]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective October 19, 1983, to the loan of $620,000 (the Loan) to Pezrow Enterprises, Inc. (Pezrow), a party in interest with respect to the Plan, and the guarantee of Pezrow's obligations pursuant to the Loan by Ken J. Pezrow Corporation, the sponsor of the Plan, provided that the terms and conditions of the transactions are not less favorable to the Plan than those obtainable in an arm's-length transaction with a third party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 4, 1984 at 49 FR 19163.

Effective Date: This exemption will be effective October 19, 1983.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Laborers' District Council Vacation Fund for Baltimore and Vicinity (the Vacation Plan) Located in Baltimore, Maryland

[Prohibited Transaction Exemption 84-101; Exemption Application No. L-4934]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the transfer of $165,000 in uncommitted reserves by the Vacation Plan to the Construction Workers' Trust Fund (the Welfare Plan).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 4, 1984 at 49 FR 19164.

Written Comments: The Department received one written comment submitted on behalf of the trustees (the Trustees) of the Vacation Plan by their counsel. In a letter dated May 16, 1984, the Trustees' representative informed the Department that the amount to be transferred from the Vacation Plan to the Welfare Plan would be $165,000 rather than the $225,000 amount specified in the notice of proposed exemption. The Trustees' representative said the amount to be transferred was changed because at the time the exemption application was submitted, the surplus available for transfer was calculated by comparing the total assets of the Vacation Plan as of July 31, 1983 (which were $798,061) with the total employee collections as of the same date (which were $545,634) for the October 1, 1982-September 30, 1983 distribution year. The Trustees' representative stated that this comparison produced a net surplus of $252,427.

Since it was decided that the Vacation Plan would retain $25,000 of the surplus funds to cover future claims for past vacation benefits, the Trustees' representative indicated this left approximately $225,000 available for transfer. However, The Trustees' representative noted that the above calculation did not take into account the interest regularly paid on vacation accounts at the time of distribution (The total interest paid in November 1983 was $56,220) or the annual expenses for accounting, administrative and legal services. He said these expenditures had the effect of reducing the surplus as of March 31, 1984 to $210,910 ($516,265 total Vacation Plan assets less $305,355 total employee collections to date). Accordingly, after subtracting the $25,000 of surplus funds to be retained by the Vacation Plan and an amount for a portion of the interest to be paid in November 1984 with respect to the current distribution year, the Trustees' representative asserted that $165,000 would be available for transfer to the Welfare Plan.

In addition, the Trustees' representative said all interested persons were apprised of the change in the amount to be transferred at the time the notice of proposed exemption was distributed.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Stanley J. Leiken, M.D., Inc. Profit Sharing Plan and Stanley J. Leiken, M.D., Inc. Money Purchase Plan (the Plans) Located in Encino, California

[Prohibited Transaction Exemption 84-102; Exemption Application Nos. D-5023 and D-5024, respectively]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale to Stanley J. Leiken, M.D. by the Plans of their respective interests in two notes (the Notes) at face value, plus accrued interest to the date of sale, provided that the sale price is at least equal to the fair market value of the Notes on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 24, 1984 at 49 FR 17623.

Comments and Hearing Requests

The applicant represents that it was unable to notify interested persons of the proposed exemption within the time period specified in the Federal Register notice of April 24, 1984. Therefore, pursuant to discussions with the Department, all interested persons were notified of the proposed exemption on May 30, 1984, and informed that the comment period would be extended until June 29, 1984.

For Further Information Contact: Mrs. Mary Jo Fite of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Bell System Pension Plan Trust; Bell System Management Pension Plan Trust; Bell System Trust (the Trust) Located in New York, New York

[Prohibited Transaction Exemption 84-103; Exemption Application Nos. D-5056 and D-5059]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to effective June 24, 1983, to the acquisition by the Trust from John Hancock Mutual Life Insurance Company (Hancock) of a parcel of improved real property located at 9601 Wilshire Boulevard, Beverly Hills, California, for $10 million pursuant to the exercise of an option in a ground lease assigned to the Trust by 9601 Associates, provided that the transaction was approved by Heitman Advisory Corporation, a Trust fiduciary unreleated to and not affiliated with Hancock.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 24, 1984 at 49 FR 17624.

Effective Date: This exemption will be effective June 24, 1983.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

The Voluntary Employees' Beneficiary Association Trust of Panhandle Eastern Corporation and Participating Affiliates (the VEBA) Located in Kansas City, Missouri

[Prohibited Transaction Exemption 84-104; Exemption Application No. D-5068]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the purchase by the VEBA on behalf of certain plans of certain real property (the Property) from Panhandle Eastern Pipe Line Company (PEPL), the subsequent leaseback of the Property by the VEBA to PEPL under the terms described in the notice of proposed exemption, and the possible repurchase of the Property by PEPL for cash from the VEBA pursuant to the terms of the lease, provided: (1) The VEBA pays no more than the fair market value of the Property at the time of acquisition; (2) the terms of the lease are no less favorable to the VEBA than those obtainable in an arm's-length transaction with an unrelated party; and (3) the VEBA receives no less than fair market value for the Property at the time of any subsequent sale back to PEPL.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 4, 1984 at 49 FR 19165.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 12th day of July, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-16904 Filed 7-16-84; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-5129]

Withdrawal of the Proposal Exemption; Pitometer Associates, Inc. Profit Sharing Plan Located in New York, NY

In the Federal Register dated March 30, 1984 (49 FR 12775), the Department of Labor (the Department) published a notice of pendency of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The notice of pendency concerned an application filed on behalf of the Pitometer Associates, Inc.

In a letter dated June 27, 1984, the applicant's representative notified the Department that an exemption for the transaction described in the above cited notice was no longer sought. Accordingly, the representative requested that the application for exemption be withdrawn from consideration by the Department.

Signed at Washington, D.C., this 12th day of July, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-16903 Filed 7-16-84; 8:45 am]

BILLING CODE 4510-29-M

LEGAL SERVICES CORPORATION

Grant Awards for Expansion and Development of Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant awards.

SUMMARY: The Legal Services Corporation (LSC) announces the award of additional grants for the expansion and development of Law School Civil Clinical programs to assist LSC-eligible clients with their civil legal cases. Pursuant to the Corporation's announcement of funding availability in Volume 49, No. 54, page 10204 of the Federal Register of March 19, 1984, a total of $361,000 will be awarded to the following five schools:

1. University of North Carolina—$70,000
2. University of Notre Dame—$85,000
3. Gonzaga University—$75,000
4. State University of New York-Buffalo—$77,000
5. University of San Diego—$54,000

These five grants are in addition to the nine grants previously announced in Volume 49, No. 115, page 24469 of the Federal Register published June 13, 1984. This additional funding brings the total

grant amounts awarded through the Law School Civil Clinical Program to $1,061,000.

Each grant will be for a term of eighteen months. As a research project, these grants are awarded pursuant to authority conferred by sections 1006(a)(1)(B) and 1006(a)(3)(A) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 1007(F) of this Act, with a request for comments and recommendations within a period of thirty (30) days from date of publication of this notice. Grant awards will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

DATE: All comments and recommendations must be received by the Office of Program Development of the Legal Services Corporation within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Charles T. Moses III, Legal Services Corporation, Office of Program Development, 733 Fifteenth Street NW., Washington, D.C. 20005, (202) 272-4340.

SUPPLEMENTARY INFORMATION: The purpose of this research project is to determine the ability of law school clinics to augment existing direct service delivery provided by current LSC grantees. By helping to develop and expand law school clinics, the Corporation would thereby also educate law students to the problems of poor persons. These clinics will encourage future lawyers to become interested in the provision of legal services to poor persons, acting either as legal aid attorneys or through *pro bono* or reduced fee efforts as members of the private bar. Another goal of the project is to increase the cooperation between established law schools and all segments of the legal community.

The project is designed to provide monetary assistance for expansion and development of law school clinical programs to assist LSC-eligible clients. This expansion could include increasing the number of supervising attorneys and participating students, developing new areas of clinical coverage or providing legal services to LSC-eligible clients who are not otherwise receiving legal assistance.

Peter Broccoletti,

Director, Office of Program Development.

[FR Doc. 84-18860 Filed 7-16-84; 8:45 am]

BILLING CODE 6820-35-M

Announcement of Grant Award

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant award.

SUMMARY: The Legal Services Corporation (LSC) announces its intention to award a one-time grant of $22,000 to the North Carolina Bar Association for its Volunteer Lawyers Pro Bono/Private Bar Involvement Program. These funds will be awarded on a non-recurring basis under the authority of sections 1006(a)(1)(B) and 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended in 1977. The grant will cover the period beginning August 20, 1984, and ending March 31, 1985. There will be no refunding rights for this one-time grant under section 1011 of the Legal Services Corporation Act or Part 1625 of the Corporation's Regulations. This public notice is issued pursuant to section 1007(f) of the Legal Services Corporation Act, with a request for comments and recommendations within a period of thirty (30) days from date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

DATE: All comments and recommendations must be received by the Office of Program Development of the Legal Services Corporation within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Heidi J. Ackerman, Assistant Director Office of Program Development Legal Services Corporation, 733 Fifteenth Street NW., Washington, D.C. 20005, (202) 272-4340.

SUPPLEMENTARY INFORMATION: The purpose of this grant is to assist the North Carolina Bar Association's Volunteer Lawyers Pro Bono/Private Bar Involvement Program in its efforts to expand the availability of high-quality legal services to poor individuals. Project activities will include: (1) The development of a comprehensive practice manual for volunteer attorneys; and (2) an intensive effort to involve corporate and university attorneys in pro bono activities..

Donald P. Bogard,

President, Legal Services Corporation.

[FR Doc. 84-18882 Filed 7-16-84; 8:45 am]

BILLING CODE 6820-35-M

Announcement of Grant Awards

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant award.

SUMMARY: The Legal Services Corporation (LSC) announces its intention to award a one-time grant of $25,000 to the State Bar of Arizona/Arizona Bar Foundation for the implementation of Arizona's Interest on Lawyers' Trust Account (IOLTA) program. These funds will be awarded on a non-recurring basis under the authority of sections 1006(a)(1)(B) and 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended in 1977. The grant will cover the period beginning August 20, 1984, and ending August 20, 1985. There will be no refunding rights for this one-time grant under section 1011 of the Legal Services Corporation Act or Part 1625 of the Corporation's Regulations. This public notice is issued pursuant to section 1007(f) of the Legal Services Corporation Act, with a request for comments and recommendations within a period of thirty (30) days from date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

DATE: All comments and recommendations must be received by the Office of Program Development of the Legal Services Corporation within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Heidi J. Ackerman, Assistant Director, Office of Program Development, Legal Services Corporation, 733 Fifteenth Street NW., Washington, D.C. 20005, (202) 272-4340.

SUPPLEMENTARY INFORMATION: This grant will be awarded pursuant to the Legal Services Corporation's announcement of the continued availability of funds to develop and implement Interest on Lawyers' Trust Account (IOLTA) programs (Federal Register, p. 22699, June 1, 1984). LSC intends these grants to foster IOLTA programs which will serve as a source of private sector funding to supplement federal funding for the direct delivery of civil legal services to poor individuals.

Arizona's IOLTA program is being implemented by Order of the Arizona Supreme Court. Pursuant to that Order, funds received by an attorney from a client or in a client related matter which, in the attorney's judgment, would only generate a nominal amount of interest if placed in a separate interest bearing trust account, may be "pooled" with similar funds held for other clients. The interest earned by these "pooled" funds, net of service charges, will be paid to the Arizona Bar Foundation whose first priority for these funds is the

"development of a statewide program for the delivery of free civil legal services to indigents."

Donald P. Bogard,

President, Legal Services Corporation.

[FR Doc. 84-18861 Filed 7-16-84; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Meeting

July 12, 1984.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby given the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a meeting on Thursday and Friday, August 2-3, 1984. The meeting will be held in Page Building #1, Rooms 416 and B-100, 2001 Wisconsin Avenue, NW., Washington, DC. The meeting will commence at 9:15 a.m. and end at 5:00 p.m. on August 2 and will commence at 8:30 a.m. and end at 3:30 p.m. on August 3. The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local government, was established by Congress by Pub. L. 95-63, on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit other reports as may from time to time be requested by the President Congress.

The tentative agenda is as follows:

Thursday, August 2, 1984

2001 Wisconsin Avenue, NW., Page Building #1, Room 416, Washington, DC

Plenary

9:15 a.m.-12:00 Noon
- Announcements
- Program and Administration Briefings for Members by NACOA Staff, Room 416

12:00 Noon-1:00 p.m.—Lunch

Panel Meetings

1:00 p.m.-5:00 p.m.
- North Pacific Fur Seal Treaty

Chairman: Charles Black
Room 416
Speakers: TBA
1:00 p.m.-2:00 p.m.
- Weather Services

Chairman: S. Fred Singer
Room B-100
Speakers: None
Topic: Panel Work Session
2:00 p.m.-5:00 p.m.
- Shipbuilding

Chairman: Don Walsh
Room B-100
Speakers: None
Topic: Panel Work Session
5:00 p.m.—RECESS

Friday, August 3, 1984

2001 Wisconsin Avenue, NW., Page Building #1, Room 438, Washington, DC 20235

Panel Meeting

8:30 a.m.-12:00 Noon
- OCS and Coastal Zone Issues

Chairman: John Norton Moore
Room 416
Speakers: TBA
12:00 Noon-1:00 p.m.—Lunch

Plenary

1:00 p.m.-3:30 p.m.
- Staff Briefings Continued
- Discussion of Future Agenda Items
- Panel Reports

3:30 p.m.—Adjourn

Persons desiring to attend will be admitted to the extent seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meetings. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each sessions.

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street NW., Washington, DC 20235.

Dated: July 12, 1984.

Steven N. Anastasion,

Executive Director.

[FR Doc. 84-18906 Filed 7-16-84; 8:45 am]

BILLING CODE 3510-12-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357-7934.

SUPPLEMENTARY INFORMATION: On May 24, 1984, the National Science Foundation published a notice in the Federal Register of permit application received. On June 28, 1984 a permit was issued to: Sankar Chatterjee.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 84-18869 Filed 7-16-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Record Keeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: New.
2. The title of the information collection: Limiting the Use of Highly Enriched Uranium in Research Reactors.
3. The form number if applicable: Not Applicable.
4. How often the collection is required: On occasion.
5. Who will be required or asked to report: Non-power reactor licensees.
6. An estimate of the number of responses: 31.
7. An estimate of the total number of hours needed to complete the requirement or request: 4920.
8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.
9. Abstract: The Commission needs information from holders of operating licenses for nuclear non-power reactors to determine if a reactor has a unique purpose, to determine the final schedule for such reactors to use high enriched uranium fuel of enrichment as close to 20% as is available and acceptable to the NRC, and to determine the final

schedule for all other nuclear non-power reactors to convert to low enriched uranium fuel.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395-7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 12th day of July 1984.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 84-18892 Filed 7-16-84; 8:45 am]

BILLING CODE 7590-01-M

Order Modifying Certain Licenses (Effective Immediately); J.L. Shepherd Mark I

I

Recently, the Nuclear Regulatory Commission (NRC) staff was notified by a licensee of the failure of a locking mechanism on a self-shielded irradiator which could have resulted in a radiation overexposure. ("Self-shielded" irradiators are designed so that the radioactive source remains in a shielded position at all times, both duiring storage and during irradiations. Therefore, the irradiators need not be placed in a shielded room.)

The irradiator is a J.L. Shepherd Mark I, containing about 6,000 curies of cesium 137. The unit is operated as follows: (1) with the source in its shielded storage position, the shielded door is opened, (2) materials to be irradiated are placed inside the irradiator chamber, (3) the shielded door is closed, (4) the radioactive source is raised into the irradiation chamber, (5) after irradiation is complete, the source is lowered, and (6) the door is opended for removal of irradiated materials.

The shielded door is interlocked so that it should not open when the radioactive source is in the irradiation chamber. However, in the case reported to NRC, the lock mechanism failed. In such a situation, an operator who opens the shielded door with the source raised could be subjected to substantial radiation exposure. The J.L. Shepherd Model 81-22 irradiator employs an interlock similar to the Mark I.

The NRC staff has examined the irradiator in question and conformed the defect. Furthermore, a New York City inspector checking a J.L. Shepherd Mark I irradiator in New York reported a malfunctioning interlock system. NRC and the Agreement States are studying the problem further to assess its generic implications.

Based on the foregoing, I have concluded that the possibility of failure of locking mechanisms and/or mechanical timers on J.L. Shepherd Mark I and Model 81-22 irradiators represents a potential radiation hazard warranting immediate preventive action pending further investigation. I have determined, therefore, that the public health, safety, and interest require that the restrictions on the use of such irradiators as prescribed in Section II of this Order should be made immediately effective.

II

Accordingly, pursuant to sections 81, 116 i, 162 o, and 182 of the Atomic Energy Act of 1954, as amended, and 10 CFR Part 2 and 30 of the commission's regulations It is hereby ordered, effective immediately, that:

Each license that authorizes possession of byproduct material in a J.L. Shepherd Mark I or Model 81-22 self-shielded irradiator is hereby amended to add the following conditions:

(1) The J.L. Shepherd irradiator shall not be used unless the licensee provides a calibrated and operable radiation survey meter *or* room monitor for use with the irradiator.

(2) The irradiator door shall not be opened until the operator has checked visual indicators to verify that the source has returned to its safe storage position.

(3) Each room monitor: (a) Shall be operable at all times when the irradiator is in use, (b) shall activate a visible and audible alarm when radiation levels exceed 2 millirems per hour, (c) shall be located to detect any radiation escaping from the irradiator door, and (d) shall be located so that it is visible to the irradiator user when he is next to the irradiator.

(4) If a room monitor is not installed, a survey meter shall be used: (a) To determine the radiation level at the irradiator door when the door is closed, and (b) to check for any increase in radiation levels each time the irradiator door is opened. In conducting such checks, operators shall position themselves so as to minimize exposure to any radiation escaping from the open door.

(5) If abnormal radiation levels or any malfunction of the irradiator are detected at any time, the licensee shall stop use of the irradiator and immediately notify the appropriate NRC regional officer by telephone.

(6) The licensee shall not attempt repair or authorize others to attempt repair of the irradiator except as specifically authorized in a license issued by NRC.

III

Any affected licensee may request a hearing on this Order. A request for a hearing shall be submitted within twenty (20) days of the date of this Order to Mr. R.E. Cunningham, Director, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Any request for a hearing shall not stay the immediate effectiveness of this order.

IV

If a hearing is requested, 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 will be: Whether, on the basis of the matters set forth in Sections I and II of this Order, this Order should be sustained.

Dated at Bethesda, Maryland this 3rd day of July, 1984.

For the Nuclear Regulatory Commission.

Richard E. Cunningham,

Director, Division of Fuel Cycle and Material Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 84-18893 Filed 7-16-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-456 and STN 50-457]

Availability of Final Environmental Statement; Braidwood Station, Units 1 and 2

Notice is hereby given that the Final Environmental Statement (NUREG-1026) has been prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed operation of the Braidwood Station, Units 1 and 2 by the Commonwealth Edison Company. The Braidwood Station is located on a site near the Kankakee river in Reed Township, Will County, Illinois, 1.4 miles south of Braidwood and 20 miles south-southwest of Joliet, Illinois.

The Final Environmental Statement (NUREG-1026) is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555 and in the Wilmington Township Public Library, 201 S. Kankakee Street,

Wilmington, Illinois 60481. The Final Environmental Statement is also being made available at the State Clearinghouse, Bureau of the Budget, Lincoln Tower Plaza, 524 S. Second Street, Room 315, Springfield, Illinois 62706 and at the Northeastern Illinois Planning Commission, 400 West Madison Street, Chicago, Illinois 60606.

The notice of availability of the Draft Environmental Statement (DES) for the Braidwood Station and request for comments was published in the Federal Register on January 20, 1984 (49 FR 2561) and corrected on February 24, 1984 (49 FR 7017). The comments received from Federal, State and local agencies and interested members of the public have been included as appendices to the Final Environmental Statement.

Copies of the Final Environmental Statement (NUREG-1026) may be purchased by calling (301) 492-9530 or by writing to the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 10th day of July, 1984.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 84-18888 Filed 7-16-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-413 and 50-414]

Duke Power Co. (Catawba Nuclear Station, Units 1 and 2); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Inspection and Enforcement, has issued a decision concerning a petition dated September 14, 1983, filed by Government Accountability Project on behalf of the Palmetto Alliance. The petitioner had requested that, *inter alia,* the Nuclear Regulatory Commission take action to require a management audit of the Duke Power Company and an independent review of the as-built conditions of the Catawba Nuclear Station, alleged design deficiencies and the quality assurance program. The Director, Office of Inspection and Enforcement, has decided to deny the petitioner's request.

The reasons for this decision are explained in a "Director's Decision under 10 CFR 2.206" (DD-84-16), which is available for public inspection in the Commission's public document room, 1717 H Street, NW., Washington, DC, and in the local public document room for the Catawba Nuclear Station at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

A copy of the decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland, this 6th day of July 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84-18889 Filed 7-16-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-389]

Florida Power and Light Co., et al., Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-16 issued to Florida Power and Light Company, Orlando Utilities Commission of the City of Orlando, Florida and Florida Municipal Power Agency (the licensee), for operation of the St. Lucie Plant, Unit No. 2, located in St. Lucie County, Florida.

The amendment would authorize the licensee to increase the spent fuel pool storage capacity from 300 to 1188 fuel assemblies. The total of 1188 is the ultimate capacity for this amendment and is attained when Region I is converted to a Region II configuration. This will change the storage capacity of Region I from 224 spent fuel elements to 336. The proposed expansion is to be achieved by reracking the spent fuel pool into two discrete regions. Region I includes six modules having a total of 448 storage cells. Only one-half of these cells will be available for the storage of fuel assemblies. The unused cells will be provided with cell blocking devices and neutron absorbing "L" inserts. The 224 available cells in Region I will allow for the storage of unirradiated fuel assemblies with Uranium-235 enrichments up to 4.5%, while maintaining the required subcriticality of K_{eff} less than or equal to 0.95. Region II includes thirteen modules having a total of 1136 storage cells of which 852 (75%) will be available for the storage of fuel assemblies. The unused cells will act as neutron flux traps to maintain the required subcriticality and will be provided with cell blocking devices. The present racks have a center-to-center cell spacing of 14 inches. Under the proposed amendment, the nominal center-to-center spacing of the cells would be reduced to 8.96 inches. There is currently no spent fuel in the St. Lucie 2 spent fuel pool, nor is there expected to be any when the new spent fuel racks are installed. This amendment was requested in the licensee's application for amendment dated March 13, 1984.

The technical evaluation of whether or not an increased spent fuel pool storage capacity involves significant hazards consideration is centered on three standards:

(1) Does increasing the spent fuel pool capacity significantly increase the probability or consequences of accidents previously evaluated? Closer spacing of fuel assemblies does not significantly increase the probability or consequences of accidents previously analyzed;

(2) Does increasing the spent fuel storage capacity create the possibility of a new or different kind of accident from any accident previously analyzed? The staff has not identified any new categories or types of accidents as a result of reracking to allow closer spacing for the fuel assemblies. The proposed reracking does not create the possibility of a new or different kind of accident previously evaluated for the spent fuel pool. In all reracking reviews completed to date, all credible accidents postulated have been found to be conservatively bounded by the evaluations cited in the safety evaluation reports supporting each amendment; and

(3) Does increasing the spent fuel pool storage capacity significantly reduce a margin of safety? The staff has not identified significant reductions in safety margins due to increasing the storage capacity of spent fuel pools. The expansion may result in a minor increase in pool temperature by a few degrees, but this heat load increase is generally well within the design limitations of the installed cooling systems. In some cases it may be necessary to increase the heat removal capacity by relative minor changes in the cooling system, i.e., by increasing a pump capacity. But in all cases, the temperature of the pool will remain below design values. The small increase in the total amount of fission products which are both volatile and radioactive in the pool is not a significant factor in accident considerations. The increased storage capacity may result in an

increase in the pool reactivity as measured by the neutron multiplication factor (K_{eff}). However, after extensive study, the staff determined in 1976 that as long as the maximum neutron multiplication factor was less than or equal to 0.95, then any change in the pool reactivity would not significantly reduce a margin of safety regardless of the storage capacity of the pool. The techniques utilized to calculate K_{eff} have been bench-marked against experimental data and are considered very reliable. Reracking to allow a closer spacing between fuel assemblies can be done by proven technologies.

In summary, replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies is considered not likely to involve significant hazards considerations if several conditions are met. First, no new technology or unproven technology is utilized in either the construction process or in the analytical techniques necessary to justify the expansion. Second, the K_{eff} of the pool is maintained less than or equal to 0.95. Reracking to allow closer spacing satisfies these criteria. In addition, the storage expansion method consists of replacing existing racks with a design that allows closer spacing between spent fuel assemblies and the expansion method does not involve rod consolidation or double tiering.

The licensee's submittal of March 13, 1984 included a discussion of the proposed action with respect to the issue of no significant hazards consideration. This discussion has been reviewed and the Commission finds it acceptable. Pertinent portions of the licensee's discussion of this matter, addressing each of the three standards, is presented below.

The additional assemblies that can be stored will have a lower heat generation rate and radioactivity content than the assemblies currently allowed to be stored. However, the increase in the total number of assemblies that can be stored will increase the total fuel pool heat load and radioactivity content but only by a small amount. The replacement spent fuel storage rack modules are freestanding without depending on neighboring modules or the fuel pool walls for support. Racks of similar design have been licensed at other nuclear facilities. The use of two diverse regions is not unique and two region spent fuel pools have been previously approved by the Commission.

First Standard

Involve a significant increase in the probability or consequences of an accident previously evaluated.

The analysis of this proposed reracking has been accomplished using current accepted codes, standards, and NRC guidance as specified in section 4.2 of the Safety Analysis Report (SAR).

In the course of the analysis, FPL identified the following potential accident scenarios: (1) A spent fuel assembly drop in the spent fuel pool; (2) loss of spent fuel pool cooling system flow; (3) an extreme wind or seismic event; and (4) a spent fuel cask drop. The occurrence of these accidents is not affected by the racks themselves. Thus, the proposed reracking cannot increase the probability of these accidents. Furthermore, the spent fuel racks will be installed prior to storage of any spent fuel in the spent fuel pool. Therefore, there is no potential for an accident involving spent fuel during fuel rack installation.

Similarly, the analysis of the potential accidents, summarized below, has shown that there is no significant increase in the consequences of an accident previously analyzed. The consequences of a spent fuel assembly drop have been evaluated with respect to nuclear criticality (section 3.1 of the SAR) and with respect to radioactivity release (section 5.3 of the SAR). The presence of boron in the spent fuel pool water ensures that the neutron multiplication factor (k_{eff}) ramains less than the NRC acceptance criterion of 0.95 for all accident conditions. The consequences of a dropped fuel assembly with respect to radioactivity release are not affected by the new fuel rack design itself. However, the analysis in section 5.3 of the SAR included more conservative assumptions, relative to those in the previous FSAR analysis, to bracket future changes to fuel management. As a result, the predicted radioactivity releases are about 25% larger than those reported previously, but the increases are not "significant" because the results are only 1% of NRC guidelines. Thus, the consequences of the spent fuel assembly drop accident would not be significantly increased from those previously evaluated.

Total loss of spent fuel pool cooling flow has been evaluated and is reported in section 3.2 of the SAR. The structural integrity of the spent fuel pool will be maintained and no new means of losing cooling water or flow have been identified. As indicated in section 3.2, more than 30 hours are available to restore cooling flow or to provide an alternate means for cooling before pool boiling results in a water level less than that which is meeded to maintain acceptable radiation dose levels. Also, the analysis has shown that fuel cladding integrity is maintained. Thus, the consequences of this type accident would not be significantly increased from the previously evaluated loss of cooling system flow accident.

The consequences of a seismic event have been evaluated and are summarized in section 4.3 of the SAR. The new racks are to be designed and fabricated to meet the guidance of applicable portions of the NRC Regulatory Guides and codes and standards listed in section 4.2 of the SAR. The maximum stresses within the fuel racks will be within the criteria specified in section 4.4 of the SAR. Also, movement and deflection of the fuel rack modules does not result in contact with neighboring rack modules or the fuel pool walls. The floor loading from the new racks filled with spent fuel assemblies does not exceed the structural capacity of the fuel handling building. Therefore, the integrity of the pool will be maintained and no new means of losing cooling water or flow have been identified. As indicated in section 4.1 of the SAR, the fuel handling building walls, floors, and partitions are designed to withstand hurricane and tornado winds; the protection from these extreme winds is not affected by the new fuel rack design. Thus, the consequences of an extreme wind or seismic event would not be significantly increased from previously evaluated events.

The consequences of a spent fuel cask drop outside the Fuel Handling Building has been evalauted and are reported in section 5.3 of the SAR. As stated in section 5.3, the spent fuel cask is prevented from dropping onto the spent fuel pool racks by design of the fuel building and overhead crane. Therefore, the consequences of the spent fuel cask drop are not affected by the new fuel rack design. The analysis in section 5.3 includes more conservative assumptions, relative to those in the previous FSAR anaylsis, to bracket future changes to fuel management. As a result, the predicted radioactivity releases are about 25% larger than those reported previously, but the increases are not "significant" because the results are only 8% of NRC guidelines. Thus, the consequences of a cask drop accident would not be significantly increased from previously evaluated accident analysis.

It is concluded that the proposed amendment to rerack the spent fuel pools will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Second Standard

Create the possibility of a new or different kind of accident from any accident previously evaluated.

FP&L has evaluated the proposed reracking in accordance with the guidance of the NRC position paper entitled "Review and Acceptance of Spent Fuel Storage and Handling Applications", appropriate NRC Regulatory Guides, appropriate NRC Standard Review Plans, and appropriate Industry Codes and Standards as listed in section 4.2 of the SAR. In addition, FP&L has reviewed several previous NRC Safety Evaluation Reports for rerack applications similar to this proposal. As a result of this evaluation and these reviews, FP&L finds that the proposed reracking does not, in any way, create the possibility of a new nor different kind of accident from any accident previously evaluated for the Spent Fuel Pool or Fuel Handling Building. Neither the licensee or the staff could identify a credible mechanism for breaking the structural integrity of the spent fuel pool that would result in a loss of cooling water such that cooling flow could not be maintained.

Third Standard

Involve a significant reduction in a margin of safety.

The NRC Staff safety evaluation review process has established that the issue of margin of safety, when applied to a reracking modification, will need to address the following areas:

1. Nuclear criticality considerations
2. Thermal-Hydraulic considerations
3. Mechanical, material and structural considerations.

The established acceptance criterion for criticality is that the neutron multiplication factor (k_{eff}) in spent fuel pools shall be less than or equal to 0.95, including all uncertainties, under all conditions. This margin of safety has been adhered to in the criticality analysis methods for the new rack design as discussed in section 3.1 of the SAR. That is, k_{eff} is always less than 0.95, including uncertainties at the 95/95 probability and confidence level.

In meeting the acceptance criteria for criticality in the spent fuel pool, the proposed amendment to rerack the spent fuel pools does not involve a significant reduction in the margin of safety for nuclear criticality.

Conservative methods were used to calculate the increase in temperature of the water in the spent fuel pool and demonstrate maintenance of fuel cladding integrity. This evaluation used the methods described in section 3.2 of the SAR in demonstrating that the margins of safety are maintained. The proposed reracking allows an increase in the heat load in the spent fuel pool; the evaluation shows that the existing spent fuel cooling system, under normal conditions, will maintain the pool temperature below the design basis limit, assuming the maximum heat load in the pool. Since the design basis limit is met, there is not a significant reduction in the margin of safety. Also, the maximum fuel cladding temperature, assuming total loss of fuel pool cooling, would remain below 275 °F, ensuring maintenance of fuel cladding integrity. Thus, there is no significant reduction in the margin of safety from a thermal-hydraulic or spent-fuel cooling concern.

The main safety function of the spent fuel pool and the racks is to maintain the spent fuel assemblies in a safe configuration through all environments and abnormal loadings, such as an earthquake, drop of a spent fuel assembly, or drop of any other object during routine spent fuel handling. The mechanical, material, and structural considerations of the proposed rerack are described in Section 4 of the SAR. The analysis of section 4 has shown that all criteria for fuel rack movement, stresses, floor loadings, etc., are met and that margins of safety are not significantly reduced. As previously stated, neither the licensee nor the staff could identify a credible mechanism for breaking the structural integrity of the spent fuel pool that could result in a loss of cooling water such that cooling flow could not be maintained.

In summation, it has been shown that FP&L's proposed spent fuel storage facility modifications and proposed technical specifications do *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.

Since the licensee's request to expand the St. Lucie 2 spent fuel storage pool capacity satisfies the following conditions: (1) The storage expansion method consists of replacing existing racks with a design that allows closer spacing between stored spent fuel assemblies; (2) the storage expansion method does not involve rod consolidation or double tiering; (3) the K_{eff} of the pool is maintained less than or equal to 0.95; and (4) no new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion, the Commission regards the request not to involve significant hazards consideration in that it: (1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) does not create the possibility of a new or different kind of accident from any accident previously evaluated, and (3) does not involve a significant reduction in a margin of safety.

Because the submittal and above discussion by the licensee appear to demonstrate that the standards specified in 10 CFR 50.92 are met, and because reracking technology has been well developed and demonstrated, the Commission proposes to determine that operation of the facility in accordance with the proposed amendment does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By August 16, 1984, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition

should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding 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 is required to 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, pursuant to 10 CFR 2.714(b). 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.

The Commission hereby provides notice that this proceeding is on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any petitioner or party to the proceeding, is required to employ hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." Section 134 procedures provide for oral argument on those issues "determined to be in controversy," preceded by discovery under the Rules of Practice, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law to be resolved at an adjudicatory hearing. Actual adjudicatory hearings are to be held only on those issues found to meet the criteria of section 134 and set for hearing after oral argument on the proposed issues. However, if no petitioner or party requests the use of the hybrid hearing procedures, then the usual 10 CFR Part 2 procedures apply.

(At this time, the Commission does not have effective regulations implementing section 134 of the NWPA although it has published proposed rules. See Hybrid Hearing Procedures for Expansion of Onsite Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors, 48 FR 54499 (December 5, 1983).)

Subject to the above requirements and any limitations in the order granting leave to intervene, those permitted to intervene become parties to the proceeding have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, 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 James R. Miller: 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 Mr. Harold F. Reis, Esq., Newman and Holtzinger, P.C., 1025 Connecticut Avenue, NW., Suite 1224, Washington D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. 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 that is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington D.C., and at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Dated at Bethesda, Maryland, this 11th day of July, 1984.

For the Nuclear Regulatory Commission.

Donald E. Sells,

Acting Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 84-18039 Filed 7-16-84; 8:45 am]

BILLING CODE 7590-01-M

Hydrologic Testing Strategy for the Basalt Waste Isolation Project; Availability of Draft Technical Position

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) has completed the

draft site technical position, "NRC BWIP Site Technical Position 1.1: Hydrologic Testing Strategy for the Basalt Waste Isolation Project."

DATE: Submit comments by September 17, 1984.

ADDRESS: Copies of this document may be obtained free of charge upon written request to Nancy Still, Docket Control Center, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 623-SS, Washington, DC 20555, (301) 427-4426.

FOR FURTHER INFORMATION CONTACT: Hubert J. Miller, Chief, Repository Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone No. (301) 427-4177.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982 (Pub. L. 97-425) and Commission Regulation 10 CFR Part 60 promote interaction between Department of Energy (DOE) and NRC prior to submittal of a license application for a geologic repository. These interactions are to fully inform DOE about the level of information that must be provided in a license application so as to allow a licensing decision to be made by the NRC.

The principal mechanism for providing guidance to the DOE is completion by the NRC staff of Site Characterization Analyses (SCA's) which document staff reviews of DOE Site Characterization Plans (SCP's) submitted according to the Nuclear Waste Policy Act and 10 CFR Part 60. Additional means have been developed to supplement the guidance provided in the SCA's. These include staff technical positions on both generic and site specific issues. Generic Technical Positions establish the staff's position on broad technical issues that would be applicable to any site. Site Technical Positions (STP's) establish the staff's position on a site specific technical issue. A number of STP's will be developed by the staff to establish lists of issues for sites being investigated by DOE in each of the technical areas that pertain to assessment of repository performance. Issues identified in these positions constitute what the staff considers are the technical questions that must be addressed by DOE prior to licensing. Other STP's will describe tests or approaches for collecting or analyzing data that the staff finds acceptable to resolve a specific issue.

STP's will be issued in a manner intended to provide the NRC staff with the benefit of outside comment. At an appropriate stage in the development of each STP, notice of availability will be published in the Federal Register and copies will be placed in the Public Document Rooms (PDR's) and distributed to DOE, host states and potentially affected tribes for comment. Interested members of the general public will be able to obtain copies upon request and will be encouraged to comment. At the close of the comment period (normally 60 days), the staff will consider the comments received and issue a final position.

This announcement is the first such notice of availability on an STP and solicits comment on a draft STP, "NRC BWIP Site Technical Position 1.1: Hydrologic Testing Strategy for the Basalt Waste Isolation Project." In this STP, the NRC staff discusses a hydrologic testing strategy that is considered appropriate for the Basalt Waste Isolation Project (BWIP) now being conducted by the DOE at the Hanford Reservation in the State of Washington. Guidance is provided to DOE on an approach that the NRC staff considers acceptable in determining the hydraulic data necessary and sufficient for complete site characterization. The staff considers that the guidance should provide an "envelope" of approaches broad enough to help guide the detailed decisions that must be made in the future by DOE. Therefore, this draft technical position presents a progression of alternative testing scenarios that can be implemented at BWIP for the full range of feasible hydrologic conceptual models.

Dated at Silver Spring, Maryland, this 6th day of July, 1984.

For the Nuclear Regulatory Commission.

John J. Linehan,

Section Chief, Repository Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 84-18891 Filed 7-16-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Performance Review Board; Membership

Notice is hereby given in accordance with 5 U.S.C. 4314 of a revision in the membership of the Performance Review Board of the Office of Management and Budget. The revision consists of the following appointments:

Joyce J. Walker, Deputy Associate Director, Transportation, Commerce, and Housing Division—two years

Naomi R. Sweeney, Deputy Assistant Director, Legislative Reference Division—two years

The above will join John F. Cogan, Associate Director for Human Resources, Veterans and Labor; Philip A. DuSault, Deputy Associate Director, International Affairs Division; and Darwin G. Johnson, Chief, Fiscal Analysis Branch, Budget Review Division, who are currently on the Board. Phil DuSault has been appointed as the new Chairman of the Performance Review Board. Candice C. Bryant, Deputy Associate Director for Administration, will continue to serve as the Executive Secretary of the Board.

Candice C. Bryant,

Deputy Associate Director for Administration.

[FR Doc. 84-18870 Filed 7-16-84; 8:45 am]

BILLING CODE 3110-01-M

POSTAL RATE COMMISSION

[Order No. 567; Docket No. A84-10]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5); Elm Grove, OH

(Issued July 5, 1984)

Before Commissioners: Janet D. Steiger, Chairman; John W. Crutcher, Vice-Chairman; Simeon M. Bright; James H. Duffy; Henry R. Folsom.

In the matter of: Elm Grove, Ohio 45626 (Ronald Hart, Petitioner).

Docket No. A84-10.

Name of Affected Post Office: Elm Grove, Ohio 45626.

Name(s) of Petitioner(s): Ronald Hart.

Type of Determination: Closing.

Date of Filing of Appeal Papers: June 25, 1984.

Categories of Issues Apparently Raised:

1. Effect on Community Served by Office [139 U.S.C. 404(b)(2)(A)].

Other legal isues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expendition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Peitioner(s). In a brief or motion to dismiss or affirm, the Posal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before July 10, 1984.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the Federal Register.

Charles L. Clapp,
Secretary.

Appendix

June 25, 1984—Filing of Petition
July , 1984—Notice and Order of Filing of Appeal
July 20, 1984—Last day of filing of petitions to intervene (*see* 39 CFR 3001.111(b)).
July 30, 1984—Petitioners' Participant Statement or Initial Brief (*see* 39 CFR 3001.115(a) and (b)).
August 20, 1984—Postal Service Answering Brief (*see* 39 CFR 3001.115(d)).
September 4, 1984—(1) Petitioner's Reply Brief should petitioner choose to file one (*see* 39 CFR 3001.115(d)).
September 11, 1984—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument (*see* 39 CFR 3001.116).
October 23, 1984—Expiration of 120-day decisional schedule (*see* 39 U.S.C. 404(b)(5)).

[FR Doc. 84-18887 Filed 7-16-84; 8:45 am]
BILLING CODE 7715-01-M

[Docket No. MC84-2]

Filing by the United States Postal Service of a Request for a Recommended Decision on Deletion of E-COM Subclass Provisions From Classification Schedule and Rate Schedules

July 11, 1984.

Before Commissioners: Janet D. Steiger, Chairman; John W. Crutcher, Vice-Chairman; Simeon M. Bright; James H. Duffy; Henry R. Folsom.

Notice is hereby given that on July 6, 1984, the United States Postal Service, pursuant to Chapter 36 of Title 39, United States Code, filed a request with the Postal Rate Commission for a recommended decision on deletion of the E-COM subclass provisions from both the Domestic Mail Classification Schedule (DMCS) and rate schedules. This filing has been assigned Docket No. MC84-2.

The Postal Service indicated in its request that it was acting pursuant to Resolution No. 84-5 of the Board of Governors of the United States Postal Service, June 11, 1984, which both directed the Postal Service to dispose of the existing E-COM system by sale or lease and also authorized and directed the Service to file a classification request with the Commission to remove E-COM as a subclass of mail from the Domestic Mail Classification Schedule.

The filing also notes that the Governors have determined to keep the current rates in effect during the transition period.

On July 9, 1984, the Service filed with respect to this proceeding a motion for waiver of certain provisions of Rules 54 and 64 of the Commission's Rules of Practice and Procedure. Specifically, the waiver request relates to Rule 54(i) and those portions of Rule 54 (f) (2), (f) (3), (h), (j), and (1) relating to test year costs, and to Rule 64(d).

The Service's motion asserts that it has compiled with Rules 54 and 64 to the extent possible. However, because the test year in this proceeding differs from that in Docket No. R84-1, information available from Docket No. R84-1 has not permitted compliance with all provisions of those rules. Additionally, since the elimination of the E-COM classification will not significantly affect other mail classes or subclasses, the Service asks waiver of those provisions requiring data unrelated to E-COM.

At this time, the Commision has not determined whether hearings on the request filed by the Postal Service in Docket No. MC84-2 will be necessary. Any person desiring to be heard with reference thereto and to become a party to the proceeding, or to participate as a party in any hearing thereon, should file a notice of intervention. Notices of interventions must be filed with the Secretary, Postal Rate Commission, Washington, D.C. 20268 on or before August 10, 1984, and must be in accordance with Section 20 of the Commission's Rules of Practice (39 CFR 3001.20). We direct specific attention to section 20(b) which provides that notices of intervention shall affirmatively State whether or not the intervenor requests a hearing or, in lieu thereof, a conference. Further, the notice should indicate whether or not the intervenor intends to prticipate actively in the hearing.[1] Alternatively, persons seeking limited participation, but who do not wish to become parties may, on or before August 10, 1984, file a written notice of limited participation, pursuant to Section 20a of the Commission's Rules of Practice (39 CFR 3001.20a). In addition, those persons wishing to express their view informally, while not desiring to become either a party or a limited participant, may file comments pursuant to Section 20b of the Commission Rules (39 CFR 3001.20b).

The request of the Postal Service for a recommended decision on deletion of the E-COM subclass provisions from the classification schedule and rate schedules is on file in the Commission's docket section and is available for public inspecting during regular business hours.

Persons who wish to adddress the Postal Services's motion for waiver should file their answers on or before August 10, 1984.

The Office of the Consumer Advocate (OCA) will represent the interests of the general public in this proceeding. During this proceeding, the OCA will direct the activities of Commission personnel assigned to assist him and neither he nor such personnel will participate in or advise as to any Commission decision in this case. *See* 39 CFR 3001.8. The OCA will supply, for the record, at the appropriate time, the names of all Commission personnel assigned to assist him in this case. In this proceeding, the OCA shall be separately served with three copies of all filings in addition to, and simultaneously with, service on the Commission of the 25 copies required by Section 10(c) of the Rules of Practice (39 CFR 3001.10(c).

By order of the Commission.
Charles L. Clapp,
Secretary.

[FR Doc. 84-18888 Filed 7-16-84; 8:45 am]
BILLING CODE 7715-01-M

[1] In this regard, parties who intend to participate actively in this proceeding are encouraged to inform the Postal Service informally and promptly of desired preliminary clarifications of the Postal Service's request wherever the participant believes that such clarificalton will expedite this proceeding.

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirement Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirement to OMB for review and approval, and to publish notice in the Federal Register that the agency has made such a submission.

DATE: Comments must be received on or before August 23, 1984. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer and the Agency Clearance Officer of your intent as early as possible.

COPIES: Copies of the proposed

questionnaire and forms, the requests for clearance (S.F. 83), supporing statments, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L Street NW., Room 200, Washington, D.C. 20416, Telephone: (202) 653-8538.

OMB Reviewer: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395-4814.

Information Collections Submitted for Review

Title: Small Business's Contributions to the Economy
Frequency: One time, nonrecurring
Description of Respondents: Firm heads or chief financial officers
Annual Responses: 2,000
Annual Burden Hours: 1,000
Type of Request: New

Title: Debt Collection Activities and Financial Statement of Debtor
Form No. SBA 770
Frequency: On occasion
Description of Respondents: Borrowers
Annual Responses: 782,000
Annual Burden Hours: 782,000
Type of Request: Resubmission

Title: Amendments to License Application
Form No. SBA 415C
Frequency: On occasion
Description of Respondents: Small business investment companies licensed by SBA
Annual Responses: 2,585
Annual Burden Hours: 644
Type of Request: Resubmission.

Dated: July 12, 1984.

Elizabeth M. Zaic,
Chief, Information Resources Management Branch.

[FR Doc. 84-18882 Filed 7-16-84; 8:45 am]
BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2154; Amdt. 1]

Disaster Loan Areas; Kansas

The above numbered declaration (49 FR 27648) is amended in accordance with the amendment to the President's declaration of June 22, 1984, to include Nemaha County as an adjacent county in the State of Kansas as a result of damage from severe storms, tornadoes, and flooding beginning on or about June 7, 1984. All other information remains the same, i.e., the termination date for filing applications for physical damage is the close of business on August 21, 1984, and for economic injury until the close of business on March 22, 1985.

(Catalog of Federal Domestic Assistance Programs No. 59002 and 59008)

Dated: July 5, 1984.

Bernard Kulik,
Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-18815 Filed 7-16-84; 8:45 am]
BILLING CODE 8025-01-M

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Correction to Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This corrects a notice published in the Federal Register on June 11, 1984 (49 FR 24096).

DATE: Effective July 17, 1984.

FOR FURTHER INFORMATION CONTACT: Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, Washington, D.C. 20416.

In FR Doc. 84-15610 appearing at page 24096 in the issue for Monday, June 11, 1984, in the second column, third paragraph, delete "The proposed SBDC's will not be funded for at least 75 days after this notice is published." Insert the following: "The proposed SBDC's will be funded at the earliest praticable date following the 60 day comment period. However, no funding will occur unless all comments have been considered."

Dated: July 11, 1984.

Irenemaree Castillo,
Acting Administrator.

[FR Doc. 84-18814 Filed 7-16-84; 8:45 am]
BILLING CODE 8025-01-M

Region VIII Advisory Council; Public Meeting

The Small Business Administration, Region VIII Advisory Council, located in the geographical area of Denver, will hold a public meeting on Monday, July 23, 1984, from 1:00 to 3:00 p.m., in the Denver District Office, room 426a, U.S. Custom House, 721-19th Street, Denver, Colorado, 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 Eugene Uccellini, District Director, U.S. Small Business Administration, 721-19th Street, Denver, Colorado 80202 (303) 837-2607.

Dated: July 10, 1984.

Jean M. Nowak,
Director, Office of Advisory Councils.

[FR Doc. 84-18816 Filed 7-16-84; 8:45 am]
BILLING CODE 8025-01-M

[Application No. 05/05-0189]

DGC Capital Co., Application for a License To Operate as a Small Business Investment Company (SBIC)

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 (13 CFR 107.102 (1983)), by DGC Capital Company, Norwest Center, Duluth, Minnesota 55802 for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. *et seq.*).

The proposed officers, directors, and 10 percent or more direct and indirect shareholders are:

Name and address	Title of relationship to applicant	Percentage of ownership
Robert F. Poirier, 802 Norwest Center, 230 West Superior St., Duluth, Minnesota 55802.	President and director	0
Earl J. Lockhart, 2610 E. Third St, Duluth, Minnesota 55812	Secretary, treasury and director.	0
Herschel B. Fryberger, Jr., 700 Lonsdale Building, Duluth, Minnesota 55802	Vice president and director	0
Jerry H. Udesen, 804 Alworth Building, Duluth, Minnesota 55802	Chairman of the board	0
Duluth Growth Company, 230 West Superior St., Duluth, Minnesota 55802	Direct shareholder	100.0
The Duluth Clinic, Ltd., 400 East Third Street, Duluth, Minnesota 55805	Indirect shareholder	13.0
First Bank (N.A.)—Duluth, 306 West Superior St., Duluth, Minnesota 55802	do	10.9
Norwest Bank Duluth, N.A., 230 West Superior St., Duluth, Minnesota 55802	do	10.9
Topeka Group, Inc., c/o Minnesota Power, 30 West Superior St., Duluth, Minnesota 55802.	do	21.7

Duluth Growth Company is a newly organized development stage company. Under its proposed business plan, the Company intendds to acquire majority-control or to a limited extent invest in, and operate existing businesses with a view to increasing and maintaining job opportunities in the Duluth area. It is intended that businesses acquired or invested in by the Company, which are located outside the Duluth area, will be relocated in whole or in part within the area. In certain cases, where not prohibited by SBA Regulations, the Applicant will make investments in conjunction with Duluth Growth Company, however, in most cases, the Applicant will make investments in companies unrelated to those of Duluth Growth Company.

The Applicant will begin operations with a capitalization of $500,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Duluth, Minnesota.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: July 2, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-18317 Filed 7-16-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1983 Rev., Supp. No. 25]

Glacier General Assurance Co.; Surety Companies Acceptable on Federal Bonds; Termination of Authority

Notice is hereby given that the certificate of authority issued by the Treasury to Glacier General Assurance Company, under sections 9304 to 9303 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective this date. The company was last listed as an acceptable surety on Federal bonds at 48 FR 30533, July 1, 1983.

With respect to any bonds currently in force with Glacier General Assurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Operations Staff (Surety), Banking and Cash Mangement, Bureau of Government Financial Operations, Department of the Treasury, Washington, DC. 20226, telephone (202) 634-5745.

Dated: July 6, 1984.

W. E. Douglas,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 84-18359 Filed 7-16-84; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support for non-profit activities of United States institutions and organizations in the private sector.

The primary purpose of the program is to enhance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment, activity, and resources.

Private sector organizations interested in working cooperatively with USIA are invited to consult on the development of cooperative international program concepts with special emphasis on international education and cultural exchange activities.

The Office of Private Sector Programs (E/P) works with non-profit organizations (501 C3 tax status) on cooperative international group projects which inform foreign participants about American traditions, values, social and politicial structures, and international concerns, and introduce Americans to foreign cultures, traditions and policies. Each private sector activity meets the highest professional standards, is non-partisan, and addresses substantive areas of mutual interest. Many E/P programs are designed for a participant audience of somewhat younger (25-45) better-educated potential leaders representing a wide variety of professional disciplines. Programs usually range in duration from one to three weeks.

Emphasis during the consultative process will be on the identification of organizations whose goals and objectives most clearly complement or coincide with those of USIA, and that have substantial potential for obtaining third party private sector funding in addition to USIA support.

This is not a solicitation for grant proposals. After consultation, selected organizations will be invited to prepare proposals for the limited funding available. Most funding assistance is restricted primarily to participant travel and per diem requirements, rather than to administration program development costs.

For further information, organizations interested in participating in this process should contact the Office of Private Sector Programs, Associate Directorate for Educational and Cultural Affairs, United States Information Agency, 301 4th Street SW., Washington, D.C. 20547, or call (202) 485-7348.

Dated: July 11, 1984.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 84-18319 Filed 7-16-84; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Veterans Administration Medical Center Modernization or Replacement Allen Park, Michigan; Availability of the Draft Environmental Impact Statement

Notice is hereby given that a document entitled "Draft Environmental Impact Statement (DEIS), Modernization or Replacement, Veterans Administration Medical Center (VAMC), Allen Park, Michigan," dated July 1984, has been prepared as required by the National Environmental Policy Act of 1969.

The Draft Statement discusses the potential environmental impacts associated with the Modernization or Replacement of the VAMC Allen Park. The alternatives considered include three different degree of renovation and new construction at the existing VAMC Allen Park; a total replacement VAMC at a site in Detroit, Michigan; and, the "No Action" alternative.

These alternatives all respond to a 1990 medical program that will meet the required space needs for a 641-bed hospital (approximately 913,000 gross square feet). In the renovation alternatives, some of the program space will be located in existing buildings that must be modernized with the reminder of the program in new construction.

The Draft Statement includes comments and the discussion of issues that were identified in scoping meetings conducted in the area during the fall of 1983 along with information generated by the technical analysis of a study of various key environmental elements (air quality, noise, traffic, etc.)

The Draft Statement is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. William F. Sullivan, Director, Office of Environmental Affairs (088C), Room 423, Veterans Administration, 811 Vermont Avenue NW., Washington, D.C. 20420, (202) 389-3316. Questions or requests for single copies of the Enviromental Impact Statement may be addressed to the above office.

Dated: July 11, 1984.

Harry N. Walters,

Administrator.

[FR Doc. 84-18835 Filed 7-16-84; 8:45 am]

BILLING CODE 6320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 138
Tuesday, July 17, 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

FEDERAL ENERGY REGULATORY COMMISSION

July 11, 1984.

TIME AND DATE: Approximately 1:00 p.m. (following open meeting), July 18, 1984.

PLACE: 825 North Capitol Street NE., Washington, D.C. 20426, Room 9306.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

(1) Saranac Energy Corporation's Lake Tahoma Project, Project No. 4021
(2) South Timbalier Pipeline System, Docket No. IN80-4; Chevron Pipe LIne Company, Docket No. IN80-11
(3) Yegua-Stillwell Gas Corporation, Docket No. CI84-214-000
(4) Natural Gas Pipeline Company of America, Docket No. IN82-2
(5) Gas Gathering Corporation, Docket No. IN83-2-000
(6) Texas Gas Transmission Corporation and Lawrenceburg Gas Transmission Corporation, Docket No. CP84-209-000

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone: (202) 357-8400.

Kenneth F. Plumb,

Secretary.

Certification

I hereby certify that, in my opinion, Commission deliberations concerning *Saranac Energy Corporation's Lake Tahoma Project* (Project No. 4021), scheduled on July 18, 1984 [and any subsequent meetings on the same matter that qualify under 18 CFR 375.206(a)], may properly be closed to public observation.

Discussions are likely to involve accusing persons of crimes, and the disclosure of investigative records compiled for law enforcement purposes, or information which if written would be contained in such records, whose disclosure would interfere with enforcement proceedings. Discussions are also likely specifically to concern the Commission's participation in a civil action or proceeding.

The relevant exemptions on which this certification is based are set forth in the following provisions of law:

Section 552b(c) of Title 5 of the United States Code, (5), (7)(A), (10)
Section 375.205(a) of Title 18 of the Code of Federal Regulations, (5), (7)(i), (10)

Dated: July 10, 1984.

William H. Satterfield,

General Counsel.

Certification

I hereby certify that, in my opinion, Commission deliberations concerning *In the Matter of South Timbalier Pipeline System*, Docket No. IN80-4, and *In the Matter of Chevron Pipeline Company*, Docket No. IN80-11, scheduled on July 18, 1984 [and any subsequent meetings on the same matter that qualify under 18 CFR 375.206(a)], may properly be closed to public observation.

Discussions are likely to involve accusing a person of a crime and the disclosure of investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, whose disclosure would interfere with enforcement proceedigns or participation in a civil action or proceeding. Discussions are also likely specifically to concern the initiation by the agency of a particular case involving a determination on the record after opportunity for a hearing or participation in a civil action or proceeding.

The relevant exemptions on which this certification is based are set forth in the following provisions of law:

Section 552b(c) of Title 5 of the United States Code, (5), (7)(A), (10)
Section 375.205(a) of Title 18 of the Code of Federal Regulations, (5), (7)(i), (10)

Dated: July 10, 1984.

William H. Satterfield,

General Counsel.

Certification

I hereby certify that, in my opinion, Commission deliberations concerning *Yegua-Stillwell Gas Corporation*, Docket No. CI84-214-000, scheduled on July 18, 1984 [and any subsequent meetings on the same matter that qualify under 18 CFR 375.206(a)], may properly be closed to public observation.

Discussions are likely to involve accusing persons of crimes. Discussions are also likely to involve the disclosure of investigative records compiled for law enforcement purposes, or information which if written would be contained in such records, whose disclosure would interfere with enforcement proceedings. Discussions are further likely specifically to concern the initiation by the agency of a particular case involving a determination on the record after opportunity for a hearing, and the agency's participation in a civil action.

The relevant exemptions on which this certification is based are set forth in the following provisions of law:

Section 552b(c) of Title 5 of the United States Code, (5), (7)(A), (10)
Section 375.205(a) of Title 18 of the Code of Federal Regulations, (5), (7)(i), (10)

Dated: July 10, 1984.

William H. Satterfield

General Counsel.

Certification

I hereby certify that, in my opinion, Commission deliberations concerning *In the Matter of Natural Gas Pipeline Company of America*, Docket No. IN82-2, scheduled on July 18, 1984 [and any subsequent meetings on the same matter that qualify under 18 CFR 375.206(a)], may properly be closed to public observation.

Discussions are likely to involve accusing persons of crimes. Discussions are also likely to involve the disclosure of investigative records compiled for law enforcement purposes, or information which if written would be contained in such records, whose disclosure would interfere with enforcement proceedings. Discussions are further likely specifically to concern the initiation by the agency of a particular case involving a determination on the record after opportunity for a hearing, and the agency's participation in a civil action.

The relevant exemptions on which this certification is based are set forth in the following provisions of law:

Section 552b(c) of Title 5 of the United States Code, (5), (7)(A), (10)
Section 375.205(a) of Title 18 of the Code of Federal Regulations, (5), (7)(i), (10)

Dated: July 10, 1984.

William H. Satterfield,

General Counsel.

Certification

I hereby certify that, in my opinion, Commission deliberations concerning *In the Matter of Gas Gathering Corporation*, Docket No. IN83-2-000, scheduled on July 18, 1984 [and any subsequent meetings on the same matter that qualify under 18 CFR 375.206(a)], may properly be closed to public observation.

Discussions are likely to involve accusing persons of crimes. Discussions are also likely to involve the disclosure of investigative records compiled for law enforcement purposes, or information which if written would be contained in such records, whose disclosure would interfere with enforcement proceedings. Discussions are further likely specifically to concern the initiation by the agency of a particular case involving a determination on the record after opportunity for a hearing, and the agency's participation in a civil action.

The relevant exemptions on which this certification is based are set forth in the following provisions of law:

Section 552b(c) of Title 5 of the United States Code, (5), (7)(A), (10)

Section 375,205(a) of Title 18 of the Code of Federal Regulations, (5), (7)(i), (10)

Dated: July 10, 1984.

William H. Satterfield,

General Counsel.

Certification

I hereby certify that, in my opinion, Commission deliberations concerning *Texas Gas Transmission Corporation and Lawrenceburg Gas Transmission Corporation,* Docket No. CP84-209-000, scheduled on June 28, 1984 [and any subsequent meetings on the same matter that qualify under 18 CFR 375.206(a)], may properly be closed to public observation.

Discussions are likely to involve the disclosure of investigative records compiled for law enforcement purposes, or information which if written would be contained in such records, whose disclosure would interfere with enforcement proceedings. Discussions are also likely specifically to concern the initiation by the agency of a particular case involving a determination on the record after opportunity for a hearing.

The relevant exemptions on which this certification is based are set forth in the following provisions of law:

Section 552b(c) of Title 5 of the United States Code, (5), (7)(A), (10)

Section 375,205(a) of Title 18 of the Code of Federal Regulations, (7)(i), (10)

Dated: July 20, 1984.

William H. Satterfield,

General Counsel.

[FR Doc. 84-18916 Filed 7-13-84; 10:07 am]

BILLING CODE 6717-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:00 a.m., Friday, July 20, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: July 12, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-18907 Filed 7-12-84; 4:26 pm]

BILLING CODE 6210-01-M

3

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, July 24, 1984.

PLACE: Hearing Room A, Interstate Commerce Commission, Building, 12th & Constitution Ave., NW., Washington, D.C. 20423.

STATUS: Open Special Conference.

MATTER TO BE DISCUSSED: Finance Docket No. 30300, CSX Corporation-Control-American Commercial Lines, Inc.

CONTACT PERSON FOR MORE INFORMATION: Robert R. Dahlgren, Office of Public Affairs, Telephone: (202) 275-7252.

James H. Bayne,

Secretary.

[FR Doc. 84-18977 Filed 7-13-84; 3:48 am]

BILLING CODE 7035-01-M

4

NUCLEAR REGULATORY COMMISSION

DATE: Week of July 16, 1984 and Week of July 23, 1984 (Revised)

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE DISCUSSED:

Week of July 16

Tuesday, July 17

9:30 a.m.

Discussion of Suffolk County and New York State Motion for Directed Certification (Open/Closed to be determined)

Friday, July 20

3:00 p.m.

Discussion of Commission Practice in Granting Exemptions (Public Meeting)

Week of July 23

Monday, July 23

2:00 p.m.

Discussion of Indian Point Adjudicatory Proceeding (Closed—Ex. 10) (As Announced)

Tuesday, July 24

2:00 p.m.

Discussion with S. Naymark (Quadrex) (Public Meeting) (As Announced)

Thurdsay, July 26

10:00 a.m.

Discussion of Role of the Staff/Ex Parte (Public Meeting) (As Announced)

2:00 p.m.

Discussion of Investigation and Possible Enforcement Action (Closed—Ex. 5 & 7) (New Item)

ADDITIONAL INFORMATION:

Discussion/Possible Vote on Final Rulemaking on Financial Qualifications scheduled for July 25, *postponed.*

Discussion/Possible Vote on Full Power Operating License for Diablo Canyon scheduled for July 26, *postponed.*

TO VERIFY THE SATUS OF MEETINGS CALL: (Recording)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado, (202) 634-1410.

Dated: July 12, 1984.

John C. Hoyle,

Office of the Secretary.

[FR Doc 84-18979 Filed 7-13-84; 3:49 pm]

BILLING CODE 7590-01-M

5

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 28505 (July 12, 1984)

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2 P.M. (EDT), MONDAY, JULY 16, 1984.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

ADDITIONAL MATTER: The following item is added to the previously announced agenda:

Discussion Item

2. Staff Recommendations on Cancellation of Deferred Nuclear Units.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-245-0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting to be changed to include the additional item shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below.

Approved C. H. Dean, Jr.; Richard M. Freeman.

Dated: July 11, 1984.

[FR Doc. 84-18952 Filed 7-13-84; 1:35 pm]

BILLING CODE 8120-01-M

Federal Register

Tuesday
July 17, 1984

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standard; Occupant Crash Protection; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice No. 36]

Federal Motor Vehicle Safety Standard; Occupant Crash Protection

AGENCY: Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This Rule requires the installation of automatic restraints in all new cars beginning with model year 1990 (September 1, 1989) unless, prior to that time, state mandatory belt usage laws are enacted that cover at least two-thirds of the U.S. population. The requirement would be phased in by an increasing percentage of production over a three-year period beginning with model year 1987 (September 1, 1986). To further encourage the installation of advanced technology, the rule would treat cars equipped with such technology other than automatic belts as equivalent to 1.5 vehicles during the phase-in.

DATES: The amendments made by this rule to the text of the Code of Federal Regulations are effective August 16, 1984.

The principal compliance dates for the rule, unless two-thirds of the population are covered by mandatory use laws, are:

September 1, 1986—for phase-in requirement.

September 1, 1989—for full implementation requirement.

In addition: February 1, 1985—for center seating position exemption from automatic restraint provisions.

ADDRESS: Petitions for reconsideration should refer to the docket and notice numbers set forth above and be submitted not later than August 16, 1984 to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-4723).

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I. Summary of the Final Rule

After a thorough review of the issue of automobile occupant protection, including the long regulatory history of the matter; the comments on the Notice of Proposed Rulemaking (NPRM) and the Supplemental Notice of Proposed Rulemaking (SNPRM); and extensive studies, analyses, and data on the subject; and the court decisions that have resulted from law suits over the different rulemaking actions, the Department of Transportation has reached a final decision that it believes will offer the best method of fulfilling the objectives and purpose of the governing statute, the National Traffic and Motor Vehicle Safety Act. As part of this decision, the Department has reached three basic conclusions:

- Effectively enforced state mandatory seatbelt use laws (MULs) will provide the greatest safety benefits most quickly of any of the alternatives, with almost no additional cost.
- Automatic occupant restraints provide demonstrable safety benefits,

and, unless a sufficient number of MULs are enacted, they must be required for the most frequently used seats in passenger automobiles.

- Automatic occupant protection systems that do not totally rely upon belts, such as airbags or passive interiors, offer significant additional potential for preventing fatalities and injuries, at least in part because the American public is likely to find them less intrusive; their development and availability should be encouraged through appropriate incentives.

As a result of these conclusions, the Department has decided to require automatic occupant protection in all passenger automobiles based on a phased-in schedule beginning on September 1, 1986, with full implementation being required by September 1, 1989, unless, before April 1, 1989, two-thirds of the population of the United States are covered by MULs meeting specified conditions. More specifically, the rule would require the following:

Passenger cars manufactured for sale in the United States after September 1, 1986, will have to have automatic occupant restraints based on the following phase-in schedule:

- Ten percent of all automobiles manufactured after September 1, 1986.
- Twenty-five percent of all automobiles manufactured after September 1, 1987.
- Forty percent of all automobiles manufactured after September 1, 1988.
- One-hundred percent of all automobiles manufactured after September 1, 1989.
- The requirement for automatic occupant restraints will be rescinded if MULs meeting specified conditions are passed by a sufficient number of states before April 1, 1989 to cover two-thirds of the population of the United States.
- During the phase-in period, each passenger automobile that is manufactured with a system that provides automatic protection to the driver without automatic belts will be given an extra credit equal to one-half of an automobile toward meeting the percentage requirement.
- The front center seat of passenger cars will be exempt from the requirement for automatic occupant protection.
- Rear seats are not covered by the requirements for automatic protection.

II. Background

Introduction

The Supreme Court Decision

On October 23, 1981, the National Highway Traffic Safety Administration (NHTSA) issued an order pursuant to section 103 of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1392, amending Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208; "FMVSS 208"), by rescinding the provisions that would have required the front seating positions in all new cars to be equipped with automatic restraints (46 FR 53419; October 29, 1981).

On June 24, 1983, the Supreme Court held that NHTSA's rescission of the automatic restraint requirements was arbitrary and capricious. *Motor Vehicle Manufacturer's Association* v. *State Farm Mutual Automobile Insurance Co.*, 103 S.Ct. 2856. The agency had rescinded because it was unable to find that more than minimal safety benefits would result from the manufacturers' plans to comply with the requirement through the installation of automatic belts. In particular, the Court found the agency had failed to present an adequate basis and explanation for rescinding the requirement. The Court also stated that the agency must either consider the matter further or adhere to or amend the standard along the lines that its "reasoned analysis" and explanation supports.

By a five to four vote, the Court held that the agency had been too quick in dismissing the benefits of detachable automatic belts. The Court stated that the agency's explanation of its rescission was not sufficient to enable the Court to conclude that the agency's action was the product of reasoned decision making. The Court found that the agency had not taken account of the critical difference between detachable automatic belts and current manual belts. "A detached passive belt does require an affirmative act to reconnect it, but—unlike a manual seatbelt—the passive belt, once reattached, will continue to function automatically unless again disconnected."

The Court unanimously found that, even if the agency was correct that detachable automatic belts woud yield few benefits, that fact alone would not justify rescission. Instead, it would justify only a modification of the requirement to prohibit compliance by means of that type of automatic restraint. The Court also unanimously held that having concluded that detachable automatic belts would not result in significiantly increased usage, NHTSA should have considered requiring that automatic belts be continuous (i.e., nondetachable) instead of detachable, or that FMVSS 208 be modified to require the installation of airbags.

The 1983 Suspension

On September 1, 1983, the Department suspended the automatic restraint requirement for one year to ensure that sufficient time was available for considering the issues raised by the Supreme Court's decision (48 FR 39903).

The NPRM

On October 14, 1983, the Department issued a notice of proposed rulemaking (NPRM) (48 FR 46622) asking for comment on a range of alternatives, including the following:

Retain the automatic occupant protection requirements of FMVSS 208. Under this alternative, the substantive automatic occupant protection requirements of FMVSS 208 would be retained, but a new compliance date would have to be established. Compliance could be by any type of automatic restraint, including detachable belts.

Amend the automatic occupant protection requirements of FMVSS 208. Numerous alternatives were proposed. For example, an amendment could require compliance by airbags only or by airbags or nondetachable automatic belts only. Subalternatives included automatic protection for the full front seat, the outboard seating positions, or the driver only. An additional alternative would have required that cars be manufactured with an airbag retrofit capability.

Rescind the automatic occupant protection requirements of FMVSS 208. The Department could again rescind the requirements if its analysis led it to that conclusion. The Supreme Court decision does not bar rescission after the Department "consider[s] the matter further."

The NPRM also proposed other actions that could be taken in conjunction with, or as a supplement to, the above alternatives. They were as follows:

Conduct a demonstration program. Such a program could be along the voluntary lines suggested by Secretary Coleman in 1970 and would be accompanied by a temporary suspension of FMVSS 208's automatic occupant protection requirements. It would be designed to acquaint the public with the automatic restraint technologies so as to reduce the possibility of adverse public reaction and to obtain additional data to refine effectiveness estimates.

Seek mandatory State safety belt usage laws. The Department could seek Federal legislation that would either establish a seatbelt use requirement or

provide incentives for the States to adopt and enforce such laws. If large numbers of persons wore existing manual belts, there would be less need for automatic restraints.

Seek legislation mandating consumer option. Under this alternative, the Department would seek Federal legislation requiring manufacturers to provide consumers the option of purchasing any kind of restraint system: airbag, automatic belt, or manual belt.

Following the issuance of the NPRM, the Department held public meetings in Los Angeles, Kansas City, and Washington, D.C. One hundred fifty-two people testified at these hearings. The public comment period on the NPRM closed on December 9, 1983. The Department received over 6,000 comments on that NPRM by the close of the comment period. Since then, the Department has received an additional 1,800 comments. Some of these comments raised issues or led to the identification of other alternatives on which the Department wanted to receive further public comment.

The SNPRM

As a result of the desire for additional public comment, the Department issued a supplemental notice of proposed rulemaking (SNPRM) on May 10, 1984 (49 FR 20460).

The SNPRM asked for comment on issues involving the following areas: The public acceptance of automatic restraints, the usage rates and the effectiveness of the various restraint systems, the benefits that would be derived from the various alternative means of protecting automobile front seat occupants, including potential insurance premium savings, and the testing procedures that would be required for automatic restraints. The SNPRM also sought comment on four additional proposed alternatives for occupant crash protection:

Automatic restraints with waiver for mandatory use law States. Under this proposal, automatic restraints would be required in all cars manufactured after a set date, but this requirement would be waived for vehicles sold to residents of a State which had passed a mandatory safety belt use law (MUL).

Automatic restraints unless three-fourths of States pass mandatory use laws. Under this proposal, automatic restraints would be required in all cars manufactured after a set date, unless three-fourths of the States had passed mandatory use laws before that date.

Mandatory demonstration program. This alternative involves a mandatory demonstration program, which was suggested by the Ford Motor Company. Each automobile manufacturer would be required to equip an average of five percent of its cars with automatic restraints over a four-year period.

Driver's-side airbags in small cars. Under this alternative, airbags would be required only for small cars and only for the driver's position in those cars.

The comment period on the SNPRM closed on June 13, 1984. The Department received over 130 comments.

The Statute

Pursuant to the National Traffic and Motor Vehicle Safety Act of 1966, as amended, the Department of Transportation is directed to "reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents." The Act authorizes the Secretary of Transportation to issue motor vehicle safety standards that "shall be practicable, shall meet the need for motor vehicle safety, and shall be stated in objective terms." In issuing these standards, the Secretary is directed to consider "relevant available motor vehicle safety data," whether the proposed standard "is reasonable, practicable and appropriate for the particular type of motor vehicle . . . for which it is prescribed," and the "extent to which such standards will contribute to carrying out the purposes" of the Act.

The Safety Problem

Occupants of front seats in passenger cars account for almost half of the deaths that occur annually in motor vehicle accidents (including pedestrian fatalities). In recent years (1981–1983), an average of approximately 22,000 persons have been killed annually in the front seats of passenger cars; another 300,000 suffered moderate to severe injuries and more than 2 million had minor injuries. Approximately 55 percent of these fatalities and injuries occur in frontal impacts and another 25 percent occur in side impacts. Table 1 shows the number of fatalities, by seating position, for 1975–1982, while Table 2 shows data for injuries, by severity and seating position, for 1982, the latest year for which such a breakdown is available. Table 3 provides estimates of similar data for 1990 to illustrate the impact of any rulemaking. For the 1990 data, it was assumed (for purposes of this rulemaking analysis only) that manual belt usage rates would remain the same as current rates.

TABLE 1.—FRONT SEAT PASSENGER CAR FATALITIES WITH KNOWN SEATING POSITION

	Driver	Front middle	Front right	Other front	Total
1975	16,270	644	5,601	21	22,536
Percent	72.2	2.9	24.8	0.1	100
1976	16,375	602	5,714	24	22,715
Percent	72.1	2.7	25.1	0.1	100
1977	16,987	577	5,992	14	23,550
Percent	72.0	2.5	25.4	0.1	100
1978	18,224	627	6,180	16	25,047
Percent	72.7	2.5	24.7	0.1	100
1979	18,267	513	5,968	6	24,754
Percent	73.8	2.1	24.1	.....	100
1980	17,966	526	6,012	9	24,513
Percent	73.3	2.2	24.5	.....	100
1981	17,722	460	5,844	6	24,032
Percent	73.8	1.9	24.3	.....	100
1982	15,225	373	5,202	16	20,816
Percent	73.1	1.8	25.0	0.1	100

TABLE 2.—DISTRIBUTION OF FRONT SEAT PASSENGER CAR OCCUPANT INJURIES BY SEVERITY LEVEL (1982)

Injury severity	Driver	Front middle	Front right	Other front	Total
Minor	1,368,519	29,914	515,786	2,526	1,936,745
Moderate	167,660	6,467	47,417	1,604	243,148
Serious	45,627	289	16,100	0	62,016
Severe	5,592	0	2,411	0	8,003
Critical	3,233	0	728	0	3,961
Percent of minor injuries	71.7	1.5	26.6	0.2	100.0
Percent of moderate to critical injuries	76.3	2.1	21.0	0.6	100.0

TABLE 3.—PROJECTIONS OF FATALITIES AND INJURIES FOR 1990

	Driver	Front middle	Front right	Total
Fatalities	18,050	370	6,140	24,560
Percent	73.5	1.5	25.0	100.0
Moderate to critical: Injuries	290,000	5,000	75,000	370,000
Percent	78.5	1.5	20.0	100.0
Minor injuries	2,110,000	40,000	800,000	2,950,000
Percent	71.5	1.5	27.0	100.0

To fully understand the benefits of various occupant restraint systems, it is helpful to recognize the frequency with which various front seating positions are used in cars involved in injury-producing accidents. As Tables 1 and 2 illustrate, three-fourths of all front seat occupant fatalities and serious injuries are experienced by drivers and almost all of the remainder are passengers in the right outboard seat. Thus, automatic protection is likely to have three times the level of benefits for drivers as for front seat passengers. Additionally, not only are occupants of the center seat rarely involved in fatal or injury-

producing crashes, but their involvement is declining as shown in the Tables. This decline is thought to be occurring, at least in part, because of the decline in the number of automobiles manufactured with bench-style front seats.

Current Occupant Restraint Technology

Manual Belts

Manual belts are safety belts that will provide protection in a crash if the occupant places the belt around himself or herself and attaches it. Manual belts can come in two types: Lap belts that fit around the pelvic region and combined lap and shoulder belts, which are found in the great majority of all new cars sold today. Manual shoulder belts are equipped with inertial reels that allow the belt webbing to play out so that the occupant can reach forward freely in the occupant compartment under normal conditions, but lock the belt in place if a crash occurs. To remind occupants to use their belts, FMVSS 208 requires the installation of a brief (4–8 seconds) audible and visible reminder.

Automatic Belts

The automatic belt is similar in many respects to a manual belt but differs in that it is attached at one end between the seats in a two front seat car and at the other end to the interior of the door or, in the case of a belt with a motorized anchorage, to the door frame. The belt moves out of the way when the door is opened and automatically moves into place around the occupant when the door is closed. Thus, the occupant need take no action to gain the protective benefits of the automatic belt.

Automatic belts differ significantly in their design. Some designs consist of a single diagonal shoulder belt (2-point belt) with a knee bolster located under the dashboard to prevent the occupant from sliding forward under the belt. Other designs include both a lap and a shoulder belt (3-point belt).

The designs differ also in the features and devices included to encourage belt use by motorists and at the same time allow for emergency egress if the car door cannot be opened following a crash. Several designs are described below.

One design takes advantage of the opportunity for the manufacturer to include, on a strictly voluntary basis, an ignition interlock. The belt in that design detaches from the door, but must be reattached before the car can be started the next time. This type of automatic belt (2-point belt with knee bolster) has been installed in more than 390,000 Volkswagen (VW) Rabbits over an eight-year period beginning in 1975. It was also installed on a small number of 1978–79 General Motors (GM) Chevettes. It is still available as an option on Rabbits.

Another design is similar in that the belt detaches, but there is no ignition interlock. The belt may be detached and left that way without affecting the starting of the car. This was the type of automatic belt that most manufacturers had planned to use in complying with the automatic restraint requirement before the agency issued its rescission order. It was briefly offered by General Motors as a consumer option on a Cadillac model.

A third type of automatic belt is a continuous belt that does not detach at either end. Some continuous belts use a spool release, which plays out additional webbing length. Sufficient slack is created by an emergency release lever so that the motorist can lift the belt out of his or her way and exit in an emergency. Another type of continuous belt with a spool release mechanism is the motorized belt. The belt's outer anchorage is not fixed to the door but runs along a track in the interior side of the door's window frame. When the door is opened, the anchorage moves forward along the track, pulling the belt out of the occupant's way. When the door is closed, the process is reversed so that the belt is placed around the seated occupant. This type of continuous belt, which is a two-point system with a knee bolster *and* which contains a manual lap belt, has been installed in all Toyota Cressidas for the last several model years and enhances occupant ingress and egress.

Another type of continuous belt was installed on a small number of 1980 Chevettes. The belt consisted of a single length of webbing that passed through a ring near the occupant's inboard hip and served both as a lap and a shoulder belt. The end of the lap belt that was connected to the lower rear corner of the door could be detached from the door. However, the end could not be pulled through the ring. Thus, the effect of detaching the lap belt was to create an elongated shoulder belt. The extra slack in the belt system enabled occupants to get out of their belt in the event of an emergency.

Airbags

Airbags are fabric cushions that are very rapidly inflated with gas to cushion the occupant and prevent him or her from colliding with the vehicle interior when a crash occurs that is strong enough to trigger a sensor in the vehicle. (Generally, the bag will inflate at a barrier equivalent impact speed of about 12 miles per hour.) After the crash, the bag quickly deflates to permit steering control or emergency egress.

In 1973–1976, General Motors produced approximately 11,000 full-sized Chevrolets, Buicks, Oldsmobiles and Cadillacs equipped with airbags. During the same period, Ford installed airbags in 831 Mercurys. A small number were installed in Volvos also. Today, only a single manufacturer, Mercedes Benz, is offering airbags in the United States. That company began offering airbag-equipped cars in this country beginning with the 1984 model year; it has been selling airbag cars outside the United States since late 1980. Since then, it has sold approximately 22,000 of those cars worldwide, with most sales occurring within the last year or so. GSA has contracted with Ford Motor Company to build 5,000 cars equipped with driver's side airbags. Delivery on these cars is expected to begin in Model Year 1985.

Other Automatic Occupant Protection Technologies

The automatic occupant protection provisions of FMVSS 208 do not specify that particular technologies, such as automatic belts or airbags, be used to comply with the standard. Rather, the standard requires a level of safety performance that can be met by any technology chosen by the manufacturer. Although safety belts and airbags are the most widely discussed technologies, the use of "passive interiors" as a means of compliance is also generating interest.

Under this approach, improvements are made to the vehicle structure, steering column, and interior padding so as to minimize potential occupant injuries. Thus, a "restraint" system, of any kind, is unnecessary for occupant protection in frontal crashes. GM has been actively pursuing "passive interiors."

III. Summary of the Public Comments

Introduction

In this section of the preamble we have summarized the public comments on the Department's October 19, 1983, NPRM and the May 14, 1984, SNPRM. We have presented the summaries under headings that generally relate to the headings used in the subsequent portions of the preamble. Some of the comments are very generally stated and may relate to more than one issue. Because of the large number of public comments, we have provided a representative sample of the comments made and the commenters who made them. Subsequent portions of the

preamble discuss the issues and alternatives and present the Department's position and response to the public comments. The comments are analyzed and responded to in more detail in the Department's Final Regulatory Impact Analysis (FRIA).

Occupant Protection Systems

Usage

Vehicle manufacturers generally agreed that mandating automatic belts would increase usage initially. However, based on their expectation of installing detachable automatic belts if required to install some type of automatic protection, some car manufacturers generally predicted that use would fall close to the current levels for manual belts once the belts were disconnected for the first time. GM believes this to be true for detachable automatic belts, and for nondetachable automatic belts as well. Honda also believes that, while there would be an initial increase in restraint usage if automatic belts were mandated, long-term usage of automatic belts might not be higher than current usage of manual belts. The key determinants would be the comfort and convenience of automatic belts. The other manufacturers believed that automatic belts would probably produce some small usage increase. Chrysler stated that usage for automatic belts would be less than 10 percentage points higher than current usage for manual belts. Ford commented that the use of nondetachable automatic belts would initially be higher than the usage level for detachable automatic belts, but that over the long term it would fall to the same level. Ford said further that occasional belt users would use automatic belts more often than they currently use their manual belts, but the overall level of usage would not significantly rise.

The car manufacturers generally believe that nondetachable automatic belts would not be practicable since consumers would object strongly to them and, therefore, would defeat and possibly disable them. The manufacturers concluded that there would be little or no increase in usage over manual belt rates.

The Pacific Legal Foundation (PLF) said that mechanically compelled use by unwilling occupants would be no more likely to succeed than legally compelled use by such persons.

On the other hand, the American Seat Belt Council (ASBC) believes that usage of automatic belts would be 50 percent, which is roughly halfway between the current driver usage of 14 percent for manual belts and 80 percent for automatic belts with ignition interlocks. Professor William Nordhaus of Yale University believes that use of automatic belts would increase by 33 percentage points. John Graham of Harvard University found that expert opinion varies on the extent to which automatic belts would increase usage. His survey of seven experts from that detachable automatic belts would increase usage by 10 percentage points with an 80 percent confidence interval of 5 to 40 percentage points.

The issue of use inducing features or reminder mechanisms was raised by several commenters. ASBC believes that a continuous buzzer could double usage, and that buzzers, chimes and lights would all increase usage over levels that could be observed in vehicles without such features. VW stated that a continuous buzzer might be as effective as an interlock. On the other hand, Ford stated that while a continuous buzzer would induce some non-users to wear their safety belts, driver irritation and actions to permanently defeat the system could also be anticipated.

Effectiveness

Manual Belts. The vehicle manufacturers generally stated that current manual lap and shoulder belts are more effective (when used) than either automatic belts or airbags. However, the combination of an airbag and manual lap and shoulder belts was acknowledged to be the most effective system of all.

The Automobile Importers of America (AIA) estimated manual belt effectiveness at 50 percent. Honda expressed the view that, based upon results of its 35 mile per hour crash testing, manual belts may be more effective than airbags in terms of chest acceleration and femur load injury criteria.

Most commenters on the SNPRM believed that the agency's range of effectiveness estimates for manual belts is too low. ASBC concluded that the estimate is too low because the agency estimate of lives saved from manual belt usage is approximately half the value previously cited by the agency. Renault argued that manual belt effectiveness data should not be adjusted to account for the presumably more cautious driving behavior of belt users, since belt use may lead some individuals to drive faster in the belief that they are better protected. VW provided a procedure for calculating manual belt effectiveness from NHTSA's Fatal Accident Reporting System (FARS) data, which led to a very high effectiveness estimate. Ford concluded that the agency's analysis would support a higher range of manual belt effectiveness (50–60 percent). Ford also challenged agency conclusions that manual belts are more effective in preventing moderate to serious injuries than fatalities and that manual belts are not likely to be effective in accidents involving a velocity change of over 35 miles per hour.

Automatic Belts. The manufacturers stated that automatic belts may be less effective than manual belts. Similarly, the National Automobile Dealers Association (NADA) argued that automatic belts may be less effective than current manual belts if the automatic belt is attached to the door. VW and State Farm disagreed, saying that automatic belts are as effective as manual belts.

Volvo argued that nondetachable automatic belts may be less effective than detachable automatic belts due to a "film spool effect." This effect may occur in 2-door models, if the amount of webbing must be increased to allow entrance of passengers into the rear seat area.

The Insurance Institute for Highway Safety (IIHS) criticized the agency's effectiveness estimates for automatic belts, saying there was no support for the agency's conclusion that such belts, compared with manual belts, may increase the probability of occupant ejection. IIHS also suggested that the agency consider data that show that automatic belts may reduce the probability of the occurrence of head injuries. VW also challenged the conclusion that automatic belts could permit higher rates of occupant ejection. Ford argued that the agency should use a range instead of a point estimate for the fatality reduction of automatic belts. Ford also questioned the agency's conclusion that 3-point automatic belts should be as effective as manual belts, due to the lack of data supporting such a conclusion and the fact that manual belts can be more securely adjusted than automatic belts.

Professor William Nordhaus criticized the agency's adjustment of automatic belt effectiveness data to account for the lower accident experience of drivers who had elected to use belts as compared to nonusers of safety belts. The agency had concluded that as increasing numbers of current nonusers of manual belts were brought into the population of automatic belt wearers, the overall effectiveness of automatic belts would be decreased. Professor Nordhaus argued that the agency overestimated the magnitude of this effect. Professor Nordhaus also argued that automatic belts need not be less effective than current manual belts. In

making this argument, he relied on agency crash test data and somewhat different data than those found by the agency to be most probative.

Airbags. Many consumer groups and health organizations indicated their belief that the reliability and effectiveness of airbags has been researched and tested to a far greater extent than any other item of vehicle safety equipment, and that the effectiveness of these devices is "unquestionable."

Allstate stated that airbags are more effective than belts in protecting against head and facial injuries. That company stated that while some of the dummies wearing belts "survive" 35 mph crashes under the injury test criteria, they sustained head and facial injuries far in excess of those produced with airbags at comparable speeds. Allstate noted, also, that belts were not dynamically tested as automatic restraints would be. Citing its field experience, Allstate said that airbags are effective not only in reducing deaths and injuries in frontal crashes but also in reducing injuries in side impact crashes. Allstate challenged the accuracy of the agency's NPRM estimate of airbag effectiveness, pointing out that that analysis was based on the use of restraint technology that is more than 10 years old. Allstate noted the GM itself had admitted that that technology was "obsolete." IIHS stated that, based on its analysis, airbags should be at least 34 percent effective in reducing fatalities.

Ford argued that the number of airbag cars that have been produced to date is too small to adequately answer questions about effectiveness.

PLF expressed the view that the agency really had no evidence that airbags are effective. That group argued that the agency erred in saying that the effectiveness of airbags is probably understated in the field data. According to PLF, DOT cannot know about all of the fatalities that have occurred in accidents involving airbag equipped cars. The group stated that the Department's estimate of airbag effectiveness is overstated to the extent that there are such undetected fatalities. Further, the group believes that the claim of the agency in the Preliminary Regulatory Impact Analysis (PRIA) that the large size of the care equipped with airbags leads to an understating and obscuring of the potential effectiveness of airbags in smaller size cars is no more reasonable a conclusion than one that the large size of these cars masks the deficiencies of airbags by offering greater protection to out-of-position occupants and allowing longer deployment times for airbags. This group also asked DOT to provide an updated analysis of injury data for the fleet of airbag cars.

The National Head Injury Foundation stated that the airbag offers unique protection against head injury which even the automatic belt does not.

PLF and VW suggested that the presence of airbags might induce drivers to take greater risks while driving in reliance on the perceived increased protection. PLF argued that these increased risks could easily offset any gains in protection available as a result of the airbags. Professor Orr of Indiana University raised the same point, arguing that the "risk compensation" theory is sound but that the magnitude of its effect was unknown. IIHS submitted a study showing that the implementation of a safety belt use law in a Canadian province did not result in any increased risk taken by drivers. The study looked at the frequency with which certain risky maneuvers were made before and after the law was implemented and found no significant difference. John Graham stated that, based on several studies he has undertaken, any risk-compensation effect is significantly lower than the magnitude of benefits derived from the safety improvements.

Several vehicle manufacturers expressed their view that an airbag is relatively ineffective by itself, and should be viewed as a supplement to a belt system. The Motor Vehicle Manufacturers Association (MVMA) emphasized its view that airbags are effective in frontal crashes only.

In their SNPRM comments, several commenters addressed the agency's estimated range of effectiveness for airbags. IIHS concluded that the range is conservative but not unreasonable at the middle and high ends. They cautioned, however, that it would be inappropriate to compare the effectiveness of airbags in relation to safety belts by using the low end of the airbag effectiveness range and the middle or high end of the safety belt range. Mercedes Benz commented that its new "supplemental restraint system," which employs an airbag, has worked according to design in all accident situations in which vehicles equipped with the system have been involved.

PLF and VW also said that the Department's effectiveness studies were subjective. PLF argued that DOT was using precisely the same type of analysis that GM had offered and NHTSA had rejected in the 1977 rulemaking on automatic restraints. That group stated that DOT failed to explain this change of view. The PLF also criticized the agency's studies on airbag effectivness for failing to take into account data for all vehicles using airbags, i.e., the non-GM Air Cushion Restraint System (ACRS) cars. Renault expressed the view that airbag effectiveness could not exceed 20 percent, due to the inability of airbags to provide protection in nonfrontal and ejection accident situations.

Ford argued that notwithstanding the limited amount of actual field data on airbag cars, those data cannot be totally dismissed in arriving at an estimate of airbag effectiveness. Ford also suggests updating field data to include Fatal Accident Reporting System data through 1983, instead of only through 1981 as was done in the PRIA. Ford found two of NHTSA's studies based on the National Crash Severity Study (NCSS) data to provide reasonable estimates of airbag effectiveness but found the third study to be flawed. Ford argued that the latter study was restricted to data from crashes in which airbags would most likely be effective. Ford also challenged a fourth agency study, on injury reducing effectiveness, based on field data, since it tended to show airbags to be most effective in accident situations in which the airbag is unlikely to deploy. Ford also stated that there appeared to be no basis for the agency's effectiveness range for airbags use in conjunction with safety belts.

Benefits

Several major insurance companies commissioned Professor William Nordhaus of Yale University to provide an updated economic analysis of alternative approaches to automatic crash protection. In response to the NPRM, Professor Nordhaus concluded that automatic crash protection would have net economic benefits to the nation of between $2.7 and $4.1 billion per year, while rescission would cost the nation $33 billion. Professor Nordhaus stated that every year of delay increases fatalities by approximately 5,000 and increases moderate to critical injuries by at least 70,000. His analysis also concluded that the impact of retaining the rule on profits or jobs in the automobile industry, as well as on the national economy, would be miniscule. He stated that automatic crash protection would be cost-beneficial even if automatic belts increased restraint usage by only eight percentage points and even if airbags cost $825.

Many consumer and health organizations expressed concern that the agency had understated the benefits that would be associated with automatic restraints through their prevention of deaths and injuries. IIHS noted that the

agency was relying on police reports to calculate the number of injuries from vehicle accidents. The group submitted evidence that only 70 percent of injuries resulting from vehicle accidents and treated in hospital emergency units were reported to the police. The evidence was taken from a study comparing car accident treatments in northeastern Ohio emergency rooms with police reports of accidents. To compensate for this underreporting of vehicle accident related injuries, this group suggested that the agency multiply its projected number of injuries by 1.4 to give a more accurate indication of the number of vehicular non-fatal injuries that could be expected. Such a step would, of course, increase the benefits associated with automatic restraints. Another group was also concerned that the agency had underestimated the minimum level of effectiveness of airbags and submitted an analysis showing that airbags would have a minimum effectivness of 35 percent, instead of the 20 percent minimum used by the agency in the PRIA.

Several of the health organizations commenting on the proposal emphasized that the agency ought to reconsider the human cost of the head and spinal injuries suffered by persons in car accidents. One group submitted data projecting 66,000 head injuries annually as a result of vehicle accidents, with nine percent of those injured persons either dying in the hospital or discharged to chronic institutional care. Another eight percent would be discharged but subject to follow-up medical attention. Many of these victims are young people who have to readjust to life with these injuries, which prevent them from performing even simple tasks they once did for themselves. These impacts are not readily quantifiable in dollars, according to these groups, but are just as signficant as economic impacts for the people with family members who have suffered serious head and spinal injuries.

VW asked for an explanation of the methodology used in calculating Table 3 of the SNPRM, since the baseline of fatalities if no restraints were used seems to change with each listed effectivness rate. This comment also noted that if mandatory usage laws are in effect by 1988, and 70 percent buckle up, the airbags' benefits would not equal the benefits of the mandatory use laws until the 21st century.

Professor Nordhaus states that using NHTSA's effectiveness rates for the various types of restraint systems shows both automatic belts and airbags to be highly cost-beneficial, and that further delays cost the country at least $24 billion annually. He also stated that the benefits of mandatory belt use laws are so speculative as to necessarily remove those options from any serious consideration.

IIHS stated that DOT's projected airbag usage rate of 98 percent *a fortiori* means that airbags are the most beneficial alternative, because DOT has consistently recognized that the benefits of any of the restraint systems depend almost completely on the usage rates. IIHS repeated its contention that belt nonusers constitute such a disproportionate number of crash-involved occupants that actual reductions in deaths and injuries will be noticeably lower than would be projected for that level of belt use until the usage rate approaches 100 percent.

The insurance companies stated that several companies now have in effect 30 percent premium reductions for first and third party bodily injury liability for cars with automatic restraints. They contended, however, that the benefits associated with this rulemaking are not lower insurance premiums. In their view, the benefis are the prevention or reduction in seriousness of thousands of fatalities and serious injuries annually.

Public Acceptance

State Farm stated that it considered public acceptability of restraint systems to be a very important issue. It argued that a regulatory alternative could not be rejected on the grounds of insufficient public acceptability if the benefits of the alternative would exceed the costs of that alternative. It argued further that the legislative history of the Vehicle Safety Act made it clear that safety was the overriding consideration in implementing the Act. Thus, more weight should be given to the safety benefits of a contemplated safety requirement than to the public acceptability of the devices used to comply with that requirement.

State Farm also said that public reaction has regulatory significance as a legal and practical matter only if it is translated into behavior; that is, if people disable automatic restraints. If not, public acceptability meets the statutory criteria. Public opinion surveys over the last decade, including the 1983 GM and IIHS surveys, show public support for mandatory automatic restraints, "All studies of usage rates of automatic belts show levels of incremental usage far above break-even levels."

Contradictory evidence was provided on the attitude of the public toward automatic restraints. Consumer Alert provided a public opinion poll showing that fewer than 15 percent of the respondents wanted mandatory automatic restraints. Public Citizen submitted a public opinion poll which it viewed as showing a clear preference for automatic restraints, especially airbags. IIHS cited a recent public opinion poll indicating that 56 percent of the respondents favored requiring automatic restraints on new cars as standard equipment and 37 percent favored requiring that that type of restraint be offered as an option. AAA stated that while consumers may not rush to purchase automatic restraints as options if manual belts were original equipment, they would accept automatic restraints as original equipment, particularly if they could choose between the various types of automatic restraints. Other groups argued that the increased protection against facial, spinal and head injuries afforded by airbags would result in consumers choosing airbags as the preferred automatic restraint, if they are allowed to make that choice. Most of these groups indicated that airbags are less intrusive than automatic belts, and would therefore be more readily accepted by the public.

The manufacturers said that nondetachable belts would raise consumer acceptance problems since they are more coercive than current belts. This expectation is based in part on the interlock experience of 1974. NADA said that the experience with VW Rabbits, Toyota Cressidas and GM Chevettes indicates a lack of consumer acceptance of automatic belt systems and that the GM experience with airbag cars shows a similar lack of consumer acceptance.

Mercedes, on the other hand, said that its system had met with "favorable market acceptance" in Europe and projected it would be accepted in the U.S. VW said, contrary to dealer statements, that it did not believe its automatic belts had been defeated in the sense of being destroyed but only that the interlock had been defeated, perhaps by dealers themselves.

MVMA submitted a memorandum of law with which GM and VW agreed. Ford and AMC also agreed, adding comments. MVMA restated the State Farm argument saying that State Farm believes the Act forbids NHTSA from considering adverse public reaction to a mandatory automatic requirement except to the extent that the public will disable the equipment. MVMA believes the State Farm position is not consistent with the legislative history of Act, judicial precedent, or prior positions of DOT. MVMA says that public

acceptability is part of the "all relevant factors" consideration under the Act. Two 1974 congressional actions shed light on what is acceptable: The ignition interlock ban and congressional review of a mandatory automatic restraint rule (MVMA cites the Senate debate on the 1974 Federal highway aid bill on the congressional review issue). MVMA claims Secretary Coleman's decision was made with these factors in mind. Matters of future probability, as raised in the Coleman decision, are relevant to an agency decision even though they cannot be precisely measured.

GM agreed, adding that public acceptability is not a narrow issue.

VW also agreed, stating that public acceptability is a two-faceted problem: State Farm's concern over consumers defeating or destroying the restraint systems and public popularity are equally important. Consumer backlash could result from an expensive or coercive system, such as an ignition interlock. VW claims that airbags have been oversold; fatalities would continue and DOT's credibility would be questioned.

Ford agreed, stating that public acceptance involves far broader issues than disabling unwelcome equipment. Ford asks what percentage of front seat occupants would defeat automatic restraints and whether there would be enough benefits to justify the systems. Ford's best projection is that manual and automatic usage will be equivalent over the long run; that is, positive and negative belt use inducement factors for automatic belts will balance out to produce usage rates equivalent to those for active belts. Ford said also that comfort, entry and egress, and the defeatability of automatic belt systems are still unknowns; therefore, a field test is needed.

Chrysler said the State Farm position is too narrow. There must be widespread public perception that benefits are worth the price. It predicted that the automatic restraint requirement would suffer the same fate as the ignition interlock.

Toyota said the State Farm position is inappropriate. The public may press for legislative rescission of an automatic restraint requirement, even though the public does not or cannot disable the system, citing the ignition interlock experience.

BL Technology Ltd. said that public acceptability and usage should be considered together. It said that the NHTSA definition of public acceptance is correct, i.e., "tolerance and use of restraint system", whether manual or automatic. BL suggests that the U.S. try mandatory seat belt use laws coupled with effective enforcement.

Renault accepts the State Farm interpretation but pointed out that a belt is needed with an airbag. Renault said that public acceptance and use of automatic belts will remain limited.

PLF and Consumer Alert said there is no mandate for an automatic restraint requirement. The issue of public acceptance is not limited to the sole question of deactivating mandatory automatic restraints; it encompasses all factors which may affect DOT's implementation of the Vehicle Safety Act. They said an automatic restraint requirement could cause the public to forestall buying new cars, which would delay the introduction of automatic protection and reduce safety by increasing the age of the total vehicle population. They also said DOT should consider risk compensation by those forced to wear belts or buy bags, citing John Adams' 1982 SAE paper, which PLF claims DOT has ignored. Experience in other countries is also cited to show that restrained occupants are less likely to be involved in fatalities.

IIHS said that earlier evidence submitted by them and others shows that automatic restraints, especially airbags, are acceptable.

Allstate supports State Farm on the acceptance issue. Allstate argues that if public acceptability is a controlling factor, then we cannot continue with the present manual seat belt requirements, due to low usage levels. They said there is no doubt that airbags have the most public acceptance; automatic belts have greater acceptance than manual belts. Therefore, DOT should reinstate the previous automatic restraint standard.

The American Insurance Association supports the State Farm interpretation. It said DOT should require automatic restraints because they only require toleration by the public to be effective. The standard for public acceptance should be public acquiescence, not public preference.

The National Association of Independent Insurors (NAII) said the DOT record shows that mandatory airbags are acceptable.

NADA said State Farm is correct in suggesting that public acceptance should be given a "narrow, legal interpretation." They argued that there are four indicia for determining public acceptance, each with substantial evidenced:

(1) The public has expressed opposition to coercive occupant restraint devices, e.g., the ignition interlock. The record shows people will disable automatic belts.

(2) The cost indicates that airbags will not be replaced; therefore, they will be disabled after one use.

(3) A significant number of consumers are unwilling or unable to purchase new vehicles equipped with automatic restraint devices.

(4) Consumers will buy vehicles without automatic restraints, such as vans or pickup trucks, or used cars.

Cost and Leadtime

A number of manufacturers provided cost estimates for automatic restraints. The incremental consumer costs of adding a full airbag system were estimated at $338 by GM, $307 by Ford and $800 by Chrysler. Jaguar provided an estimate of $1800.

Breed Corporation submitted an estimate of $140 for its all-mechanical airbag design, assuming a volume of one million units. According to Breed, this estimate has been independently verified by technical experts familiar with auto industry practices, procedures and pricing mechanisms. The estimate does not include necessary vehicle modifications, such as adding knee bolsters. Romeo Kojyo provided an estimate of $150 for a driver airbag retrofit kit, exclusive of installation and assuming an annual volume of one million units. Ralph Rockow, president of Dynamic Science, stated that airbags could be produced at an incremental consumer price of $185. The Automotive Occupant Protection Association incorporated the Rockow estimate in its comment and provided a detailed breakdown of costs for a $185 full front passenger system at a production volume of two million units annually.

The incremental consumer costs of adding automatic belts were estimated at $45 by General Motors and Richard Lohr, a cost estimating consultant, $115 by Chrysler, $150 by Jaguar and Honda, and $200 or more by Nissan and Renault. Peugeot provided an estimate of $350 for a motorized automatic belt system.

Numerous manufacturers provided comments on required leadtime. In commenting on an automatic belt requirement, GM stated that while 1¾ years is adequate for models already designed, three years are necessary for new designs or nondetachable automatic belts. Chrysler, Mazda and Peugeot also stated that three years are needed for automatic belts. Renault said that 24 months were needed for belts, while AMC said 30–36 months. Nissan provided an estimate of 30–42 months and Ford provided a figure of four years. VW said it could comply immediately for some models but would need four years for all models.

GM's estimate for an airbag requirement was three years for large cars and longer for small cars. Chrysler stated that four to five years would be needed to implement a requirement for full front airbags. AMC stated that 3–3½ years would be necessary for such a requirement, while Ford said 4 years. Renault said 3 years were needed while Saab claimed 58 months were necessary.

The National Safety Council said the automatic restraint requirement should be made effective September 1985, or one year thereafter at the latest. Mr. Lohr, a cost estimator, provided an estimate for automatic belts of 18 months, while the Automotive Occupant Protection Association (AOPA) stated that 18–30 months leadtime would be sufficient.

Two studies were submitted to the docket that analyzed the overall economic effects of an automatic restraint requirement. One study was by Dr. Barbara Richardson, of the University of Michigan, and was sponsored by MVMA. The other study was by Professor William Nordhaus and was sponsored by several major insurance companies.

Dr. Richardson concluded that a requirement for airbags costing between $300 and $800 per car would have severe detrimental effects on the automotive industry and the economy as a whole. Dr. Richardson stated that a short-run reduction in vehicle sales of 2.7 percent to 9.7 percent would occur, as well as an increase in unemployment of between 62,000 and 197,000 persons. She also concluded that gross national product (GNP), wages, disposable income, and personal consumption would decrease.

Professor Nordhaus concluded that an automatic restraint requirement would have a minimal effect on the automobile industry and the national economy as a whole. According to his analysis, an automatic restraint rule would result in an increase instead of a decrease in jobs in the automobile and supply industries.

NADA said the dealership operating costs and costs of automatic repair and service would increase.

Insurance Premium Changes

Numerous insurance industry commenters stated that implementation of an automatic crash protection requirement would provide significant economic benefits in the form of insurance premium reductions. Some commenters provided specific estimates of savings. Others argued more generally that an automatic restraint requirement would result in cost savings and that those savings would be reflected in insurance premium reductions. According to insurance commenters, a number of insurance companies have for some time been offering premium discounts for medical payment coverage for cars equipped with automatic restraints. Those commenters indicated that some discounts apply to all types of automatic restraints, while others are restricted to airbags.

Nationwide stated that installation of airbags in all automobiles would reduce private first- and third-party liability premiums by 24.6 percent or $31 annually per insured car. Using the Nationwide data, Professor William Nordhaus, in his NPRM comments, estimated that owners of cars equipped with automatic belts would experience consumer insurance cost savings of $24 per year. Professor Nordhaus estimated that, for vehicles equipped with automatic belts, taking into account consumer cost of the automatic belt, fuel cost and insurance cost, the total direct financial impact over the life of the vehicle would be to lower the cost of operating an automobile by about $60. According to Professor Nordhaus, this underestimates true total consumer savings as it omits noninsurance costs, lost wages, medical costs borne by the consumer and pain and suffering. New York State Insurance Superintendent Corcoran stated that, for average New York premiums, an all airbag requirement would result in insurance savings of $66 per year.

State Farm stated that while it does not now offer a discount to policy holders with automatic restraint equipped vehicles, the substantial financial benefits resulting from an automatic restraint requirement would be reflected in its rates, although it could not give a quantified estimate of that reduction. According to State Farm, its consistent policy in making insurance pricing decisions is to base them upon actual observed on-the-road insurance experience. State Farm also stated that, while that practice remains its policy, in other cases it has responded to competitive pressures where discounts have been made available, and it expects that the same thing would occur in this instance. Several other companies also emphasized that premium reductions would result as fatalities and injuries are reduced by automatic restraints. Emphasizing the relationship between premium and loss experience, Nationwide noted that since August 1981, it has lowered auto insurance rates in 19 jurisdictions, despite continuing inflation. Insurance Superintendent Corcoran stated that he would mandate reductions in New York to assure that savings to insurers are reflected in premium rate changes to the public and assumes that all other regulators would do the same. Since his comments were submitted, New York has enacted legislation authorizing the Superintendent to require such premium reductions.

Not all commenters were certain that insurance costs would be reduced. Dr. Barbara Richardson, of the University of Michigan, stated that estimates of insurance premium changes resulting from airbags range from a large decrease over the lifetime of a vehicle to a net increase in insurance cost. In addition, one insurance company, the Automobile Club of Michigan, expressed concern that the PRIA's estimates of additional insurance costs for airbags, based on replacement frequencies and costs, were substantially understated. The Automobile Club and the General Motors Acceptance Corporation (GMAC) argued that the agency forgot to include increases in insurance premiums to reflect the greater value of cars equipped with airbags.

The commenting insurance companies, including State Farm, also indicated that insurance premium reductions would occur in states that enacted safety belt usage laws, to the extent that real world experience justified such reductions. The American Automobile Association (AAA) of Michigan said it would lower personal injury premiums by 20 percent upon enactment of a seatbelt use law. Commenters indicated that some companies now offer an incentive of increased benefits at no additional cost if manual belts are worn. Commenters pointed out difficulties in implementing a discount program for seat belt usage, since verification of such usage, both generally and in the case of specific accidents, is not easy to obtain.

In response to the SNPRM, State Farm referred to the discounts offered for 5 mph bumpers as an example of the industry's quick reaction to reduce rates when new safety features are introduced. Citing the D.C. Circuit's decision in *State Farm* v. *DOT*, State Farm argued that insurance companies' practices have no significance for the decision that DOT has to make. It argued that if this concern were relevant, insurers have already given premium discounts for automatic restraint cars. It further argued that the issue of premium reductions is irrelevant to the conclusion that an automatic restraint rule will be cost-beneficial. It said this is so "because a proper cost-benefit analysis weighs the costs and benefits of a standard to society as a whole. That balance cannot be

determined from an analysis of the insurance effects of a rule, since there are enormous societal losses that go uncompensated under any insurance coverage." Finally, State Farm argued that DOT has a statutory obligation to require implementation of new technology where necessary to further the Safety Act and that consideration is different from the actuarial considerations that determine whether an insurance company will offer a premium discount.

The American Insurance Association (AIA) said that the industry has previously addressed the issue of insurance reductions. AIA pointed out that many of its members currently offer a 30 percent premium discount for medical payment and/or no-fault coverage for automatic restraint equipped vehicles. It referred to Nationwide's estimate of a potential annual premium savings per insured car that would equal $31.00 if all cars had airbags. AIA also noted that Nationwide and United Services Automobile Association (USAA) currently provide incentives for wearing manual belts.

Nationwide criticized the agency for allegedly ignoring Nationwide's previous testimony on insurance premium reductions. Nationwide said that, for the past 10 years, it has provided a 30 percent discount for first-party injury coverages for cars equipped with airbags. It further noted that, in its DOT testimony in 1976, it submitted its estimate of premium savings and its methodology for deriving that estimate. Nationwide updated that estimate to 1982, and said the potential insurance saving per policy holder is $31 annually. That estimate is for a full front seat airbag system; Nationwide said that it is currently studying what discount it would give to a driver-side only system. It expects to offer a 25 percent discount on first-party medical coverage.

Nationwide also pointed out that, since 1963, it has offered extra medical insurance coverage, at no cost, to policyholders wearing their safety belts; last year it began providing a $10,000 death benefit and doubled medical payments coverage at no extra cost to policyholders wearing belts.

Allstate said that since 1974 it has had a 30 percent discount on first-party injury coverages for airbag equipped cars. It said that if airbags were installed in the entire fleet, there would be a 30 percent reduction in all insurance premiums, including medical payments, no-fault personal injury protection, death benefits, uninsured motorist coverage and bodily injury liability protection. Allstate said it could not provide an estimate of the insurance cost savings for automatic belts.

NAII pointed to prior testimony by USAA and Allstate providing details of insurance savings and observed that Nationwide specifically responded to the Secretary's questions at the public hearing concerning savings. NAII provided an attachment summarizing the prior industry testimony on the insurance savings issue.

NAII criticized the SNPRM's suggestion that insurers are not providing incentives for belt use. It cited Nationwide's policy and Leon Robertson's study that found that insurance incentives have not increased belt use. It also cited a 1980 National Academy of Sciences report done for DOT which questioned whether insurance incentives would be effective.

The Kemper Group said it currently offers a discount of up to 30 percent on first-party medical payment and no-fault auto insurance rates for cars with automatic belts or airbags. Kemper said that the cost of replacing an airbag could raise the physical damage insurance cost, but the increase would be minimal compared to the costs of the deaths and injuries that could be avoided with airbags.

Aetna estimated that the reduction in first-party no-fault, medical payments and uninsured motorist coverage premiums would be 25 to 30 percent for airbag equipped cars. As the percentage of automatic restraint equipped cars increases in the fleet, Aetna said there could be a similar reduction in third-party bodily injury premiums.

Conversely, Mercedes said "no company to our knowledge has reduced its rates on Mercedes-Benz Supplementary Restraint System (SRS) equipped vehicles" and Volkswagen stated that, to their knowledge, "no major insurance company offers a discount to owners of automatic restraint equipped vehicles," despite the fact that VW has been approached by insurers ostensibly for that purpose. VW said it has provided information to insurance companies because it desires to see its customers who have purchased automatic belt equipped Rabbits rewarded through lower insurance premiums.

Other Issues

Product Liability. The Automotive Service Council of Michigan raised the issue of the potential liability of independent repair shops that would service automatic restraint equipped vehicles. In addition, individual new car dealers and NADA raised the issue of whether the use of automatic restraints will increase a dealer's product liability costs. William C. Turnbull, President of NADA, testified that:

> The reliability of passive restraint systems, particularly airbags, has been a matter of grave concern to dealers and consumers alike. No mass-produced product can ever be "failsafe." Components deteriorate due to passage of time, usage and climate. There are reports of inadvertent airbag deployments in the past. We fear that, with any widespread usage of airbags, incidences of inadvertent deployments and system failure will occur, with perhaps tragic consequences to vehicle occupants. In such cases, dealers may be the innocent victims of product liability lawsuits.

However, Willi Reidelbach of Mercedes-Benz, which is currently marketing an airbag-equipped car in Europe and the U.S., testified that he was not aware of any product liability concerns expressed by Mercedes dealers about the airbag system.

Several insurers provided comments on the potential of automatic restraints to reduce product liability claims and the availability and cost of manufacturer product liability insurance. Mr. Donald Schaffer, Senior Vice President, Secretary, and General Counsel of Allstate, testified that:

> Our product liability people believe that the airbag equipped cars, if you insure the total vehicle, will produce better experience than the non airbag cars because the airbag reliability factors are much higher than anything on the car. They are much higher than the brake failure rates or anything else.

Mr. Schaffer also testified that at the time of Secretary Coleman's proposed demonstration program, Allstate was Ford's product liability insurer and had informed Ford that there would be no increase in its product liability insurance costs if Ford built an airbag fleet. He also testified that Allstate entered into a written agreement with General Motors that "we would write all of their product liability insurance for cars in the Coleman demonstration fleet at the same price they were getting from their regular product liability insurer per unit for non-airbag cars of the same make and model year."

NAII also addressed the product liability concerns raised by manufacturers and dealers. NAII said that:

> The potential for product liability suits is always present for any manufacturer or seller of consumer goods. That threat is present at the current time for anyone in the distribution chain. We in the insurance industry expect that savings (not increased costs) would accrue to manufacturers and dealers, as a result of automatic crash protection systems being installed in all cars, as lives are saved and injuries are reduced, thus reducing potential litigation over safety deficiencies.

Another potential source of manufacturer liability was raised by Stephen Teret, representing the National Association for Public Health Policy. Teret argued that:

> If a reasonable means of protection is being denied to the motoring public, that denial should lead to liability, even if the liability can be imposed on each and every car manufacturer. People whose crash injury would have been averted had the car been equipped with an airbag can sue the car manufacturer to recover the dollar value of that injury.

Sodium Azide. The Institute of Scrap Iron and Steel (ISIS) and the Automotive Dismantlers and Recyclers Association (ADRA) said that they were concerned about potential health hazards posed to their employees by sodium azide contained in airbag systems. Both ISIS and ADRA noted that sodium azide is toxic and a mutagent and that there is a general correlation between mutagenicity and carcinogenicity. In addition, they raised the issue of possible air canister explosions during the recycling and scrapping process.

To reduce potential hazards they recommended a number of actions:

(1) Place a warning on the vehicles with airbags so their employees can easily identify them.

(2) Design airbag systems so that they can be deployed by remote control or so that they can be easily removed from a vehicle.

(3) Provide financial incentives, such as a bounty or fee, for removing the airbag canister.

Breed System. The Breed Corporation estimates the cost to the consumer of a Breed airbag system for the driver and one passenger to be $140 installed, based on an initial production rate of one million units annually. Breed states that its cost estimates have been independently verified by technical experts familiar with auto industry practices, procedures and pricing mechanisms. Breed says that the system still requires a "good" year of research before it can be put into production.

Ford and GM expressed doubts about the readiness and performance of the Breed System.

Breed urged DOT to require car makers to design airbag cavities in stering wheels and dashboards to facilitate the retrofitting of cars with airbags.

Automatic Belt Detachability. Virtually all commenters who addressed the issue of detachability expressed concerns that nondetachable belts should not be required. The vehicle manufacturers generally agreed that the public, especially the hard core belt nonusers, would react adversely to nondetachable automatic belts. They also doubted that the difference in the long run usage rates for detachable belts and for nondetachable belts would be significant.

GM suggested that its experience with the 1980 Chevette shows that the public will not accept nondetachable belts. According to GM, general annoyance and fear of entrapment will lead many hard core nonusers to defeat that type of belt. As to detachable automatic belts, GM says that the inertia effect cited in the *State Farm* decision can be expected to operate only until the belts are first detached. While there would be an initial increase in usage, in the long run neither detachable nor nondetachable automatic belts would yield any increase in usage. Ford agreed that fear of entrapment would produce some adverse reaction to nondetachable automatic belts. Ford stated that detachable automatic belts would produce some undefinable amount of usage increase. While nondetachable belts would produce higher increases in the short run, in the long run the usage rate for nondetachable belts would fall to the level of the usage of detachable belts. Honda commented that nondetachable belts would not be accepted by the public because of entry and exit problems, entrapment fears and poor appearance. Nissan anticipated no difference in the long-run usage rates of detachable and nondetachable belts. VW said that the high usage rate of their automatic belt is due largely to the interlock. Without the interlock, VW said, the usage rate would be between that for manual belts and the current VW Rabbit automatic belt system. VW suggested also that it was important in designing an automatic belt to locate the release mechanism near the window so that persons assisting an injured occupant could release the belt. ASBC predicted that 10–20 percent of car occupants are hard-core nonusers who will cut out nondetachable belts. The Council said that, in the long run, usage of detachable belts would fall between current manual belt usage rates and the rates for automatic belts in cars on the road today, i.e., usage would be about 50 percent. IIHS submitted a survey indicating that 68 percent would never detach a detachable belt, 21 percent would occasionally and 8 percent would do so permanently. John Graham stated that his survey of experts indicated that detachable automatic belts would increase usage by 10 percentage points and that 55 percent of motorists would dismantle nondetachable belts.

Alternatives

Retain

Most of the manufacturers indicated that they would comply by installing detachable automatic belts, since those belts would facilitate emergency escape from a vehicle after a crash and would face the least consumer resistance due to their lower price (compared to airbags) and the fact that they can be detached by occupants who do not choose to use safety belts for whatever reason.

Several insurance companies argued that the agency is required by law, based on the record, to implement some form of an automatic restraint requirement. According to State Farm, the effect of the Supreme Court's decision in *State Farm* is to require the Department to go forward with an automatic restraint requirement unless it has a rational basis for concluding that effective automatic restraint technology is not within reach of the car manufacturers. That company argued that the record amply demonstrates the existence of such technology.

Allstate argued that the record demonstrates that cost beneficial technology exists which, when included in all new cars, could save up to 10,000 lives each year and prevent more than 100,000 serious injuries annually. Allstate also argued that under the decisions of the United States Court of Appeals and the United States Supreme Court in the *State Farm* case, the Department lacks authority to look beyond that fact. That company stated that in its view, all proposed options that do not include the implementation of some form of automatic restraint requirement must, under the law, be rejected.

Similarly, NAII urged that the case for automatic protection has been fully documented. According to NAII, further delays for studies, demonstrations and so on are totally unwarranted and would only result in many more needless deaths and injuries. Such delays would also be inconsistent with the mandate of the Supreme Court.

Almost all commenting insurance companies favored implementation of the automatic restraint requirement as soon as possible. These commenters generally argued that the requirement is cost-beneficial and would save many thousands of lives and prevent tens of thousands of injuries annually. Several insurance companies stated that airbags offer the greatest possible safety benefits. However, the insurance companies generally urged that such issues as requiring compliance by means

of airbags only or barring compliance with detachable automatic belts should be considered only after a general restraint requirement has been implemented. Allstate stated that the airbag-only requirement is preferable, but said that simple retention of the automatic restraint requirement is acceptable.

IIHS supported retention, noting, as did various commenters associated with medical and health organizations, that public health measures depending for their success upon repeated cooperation of the intended individual beneficiaries, as would mandatory belt use laws, have historically had limited effectiveness.

Insurance Superintendent Corcoran of New York State maintained that it has been clearly established that, for whatever reasons, people do not generally use their manual belts, and efforts to modify this behavior have been unsuccessful for the past 15 years. He believed that it is incumbent on DOT to mandate automatic restraints as the only means for increasing usage.

The manufacturers said that if automatic belts are less effective than manual belts, then persons who regularly use manual belts would end up paying more in the future for an inferior restraint system, raising fairness questions. Most of the companies indicated that, if the automatic restraint requirement were retained, they would use detachable automatic belts to comply, since those systems facilitate emergency escape from a vehicle after a crash and would face the least consumer resistance due to their lower price (compared to airbags) and the fact that they can be detached by occupants who do not choose to use safety belts for whatever reason. However, if such belts were left detached by most occupants, little safety benefit would be gained through their installation.

PLF and Consumer Alert and vehicle manufacturers argued that DOT should concentrate on educating the public about the value of manual belts in providing protection in the event of a crash. Once the public is convinced of the need to buckle up, fatalities and injuries will decline without having to mandate expensive new equipment in cars.

GM argued that implementation of the automatic restraint requirement would divert engineering resources away from the development of more publicly acceptable alternatives, such as the "built-in" safety of energy absorbing interiors. Increasing safety through the redesign of vehicle interiors instead of the installation of add-on devices like occupant restraints would benefit unbelted as well as belted occupants at a cost far below that of airbags.

Amend

Airbag Only. Several health organizations argued that the agency should mandate airbags because that type of automatic restraint is the least intrusive for the occupant and because young drivers were the least likely to buckle manual belts and the most likely to try to defeat automatic belts. The Center for Auto Safety (CFAS) argued that small car occupants need the protection of airbags. The organization suggested that belts properly fit less than 50 percent of the population.

Many consumer groups and health organizations supported agency action that would mandate the installation of airbags in at least some new cars. To avoid the Congressional intervention that they thought might follow adoption of a requirement for nondetachable automatic belts, some consumer groups and health organizations urged adoption of either a requirement for airbags only or a requirement for airbags or nondetachable automatic belts.

The manufacturers objected to an airbag only requirement for several reasons. First, it was stated that an airbag is effective only in single impact, frontal crashes, and does not protect against occupant ejection from vehicles. The manufacturers view airbags as supplemental protection devices, to be used in conjunction with safety belts. The manufacturers also expressed concern as to the real world reliability of airbags, the difficulties in applying airbag technology to small cars, the effects of airbag inflation on out-of-position occupants (particularly small children), the potential adverse environmental impacts of using sodium azide as a propellant to inflate the airbag, and product liability impacts. The economic effects of an airbag only requirement were a major concern of the manufacturers. The additional cost of that restraint system was projected to raise vehicle prices significantly, adversely affecting industry sales and thereby employment and profitability.

Some commenters, including MVMA, argued that adopting an automatic restraint requirement that specified the installation of a specific type of restraint, i.e., airbags, would violate the requirement of the Safety Act that safety standards be stated in terms of performance instead of design.

Congressmen Dingell questioned the legal authority for an airbag only requirement in light of *Chadha*, which declared the legislative veto to be unconstitutional. The Congressman suggested that if the legislative veto provision were invalid, then because of the absence of any severability provision and because of the importance attached by Congress to the veto provision, the exception to the prohibition in the Vehicle Safety Act against non-belt standards must fall with the veto provision.

One public interest group (PLF) and one economist, Professor Lloyd Orr, argued that airbags would encourage motorists to drive less safely since they would be given more safety than they desire and would compensate accordingly. Their argument is based on the "risk compensation hypothesis," which states, for example, that given better brakes, a driver is likely to follow more closely, negating some of the benefits associated with the safer braking system. The IIHS and John Graham, another economist, presented data which contradicted the above hypothesis. Those data concern the behavior of drivers in Newfoundland which indicate that safety belt users were not any more likely than nonusers to make risky driving maneuvers. John Graham referred to papers he had authored, criticizing the concept of "risk compensation hypothesis."

Airbags and Nondetachable Automatic Seatbelts. Some consumer groups and health organizations argued that permitting readily detachable automatic belts would only encourage those consumers not already in the habit of wearing belts to detach the belts and would result in a minimal increase in protection for car occupants. These groups urged therefore that the agency mandate that automatic belts not be easily detachable.

Some consumer groups and health organizations argued that automatic belts should be detachable to allow ready escape in emergency situations and to permit those confirmed nonusers of seatbelts (estimated by these groups at 10 to 20 percent of the population) to deactivate the belts for themselves by something other than permanent means, such as cutting the belts. These groups argued that nondetachable automatic belts would lead to Congressional action overturning the entire automatic restraint standard just as Congress had overturned the ignition interlock requirement in 1974. The car manufacturers opposed this option because it would limit their flexibility by requiring the installation of the most expensive and/or controversial types of automatic restraints. Manufacturers also aruged that, given a choice, they would not produce nondetachable automatic belts because of anticipated adverse

consumer reaction and difficulty in emergency egress with such systems.

Passive Interiors. GM stated that, since the original issuance of FMVSS No. 208, there have been significant advances in the state of the art of occupant protection. These advances have been made available in large part because of the increased use of advanced computer technology in the design and development of new vehicles. GM has implemented a Vehicle Safety Improvement Program which is aimed at increasing the "built-in" safety of its vehicles for restrained and unrestrained occupants.

GM said that the purpose of the "built-in" safety strategy is to maximize the reduction in total harm resulting from vehicle crashes. It argued that "no promising technology should be excluded simply because it either cannot meet arbitrary laboratory requirements or can only meet them on selected types of vehicle. Nor should new and promising technologies be discouraged because they are not envisioned in a regulatory scheme." GM urged that implementation of FMVSS No. 208 would "impede, or at least greatly dilute the efforts that are needed to increase the state-of-the-art of other promising occupant protection technology."

In its comments on the SNPRM, GM suggested that DOT consider a more flexible approach to reducing deaths and injuries. They propose a three-step approach consisting of:

(1) Retain the current requirements of FMVSS 208, but give manufacturers the option of meeting it with manual belts;

(2) If a manufacturer chooses to comply with Standard 208 using manual belts, test the vehicle as follows:

(a) Fastened manual belts must satisfy the same dynamic criteria as airbags or automatic belts; and

(b) The vehicle would be subjected to a 25 mph barrier crash with unfastened manual belts. The same injury criteria would be used to evaluate acceptable performance in this test as is used in the 30 mph test above; and

(3) Approve various changes in the Standard 208 test procedures, most notably using the Hybrid III dummy, instead of the Hybrid II.

GM stated that this option would offer protection to all unbelted front seat occupants, not just the 5% of current nonusers who would use automatic belts. GM estimated that this step would yield a 12% reduction in fatalities and serious injuries, which is equivalent to attaining 36 percent manual belt usage.

Small Cars. Several car manufacturers expressed concern about the difficulty of applying airbag technology to small cars. The shorter "crush space" between the fronts of small cars and the passenger compartments of those cars means that small cars decelerate faster in a frontal crash, leaving less time for an airbag system to sense the crash and inflate the airbag. The limited time means that the airbags must inflate more rapidly than in a large car, raising concerns as to airbag induced injuries, particularly to out-of-position occupants. GM expressed the view that the faster airbag inflation rate needed for small cars, in conjunction with the thicker airbag needed to decelerate the faster moving occupants of a small car, could cause fatal lesions in out-of-position occupants.

Honda expressed the view that airbags provide inferior protection as compared to manual belts in small cars at crash speeds above 30 miles per hour. Attempts to improve airbag peformance in small cars through the use of a knee bolster were not particularly successful, since the resulting limited available space in such cars made entry inconvenient and the weight of the knee bar adversely affected fuel economy.

IIHS noted that two studies compared the effectiveness of airbags and manual lap/shoulder belts in small cars. One study, using Ford Pintos, showed that airbags performed slightly better than belts. The other study, using Renault R-12's, showed that the two types of restraints performed approximately the same, according to IIHS.

GM agreed that small cars needed the highest priority, but argued that the rapid inflation rate required to meet a 30 mph test poses an unacceptable risk to out-of-position occupants.

State Farm said that the analysis by Professor William Nordhaus of Yale University showed that it is significantly more cost-beneficial to require installation of automatic restraints in both outboard seating positions and to require automatic protection for all size cars.

NADA restated its general opposition to any mandated automatic restraint and said that it was specifically opposed to a driver airbag-only option for small cars. NADA said that such a standard would be a design standard in violation of the Vehicle Safety Act and current airbag technology is not adequate for small cars.

Ford estimated that the cost of a driver-side airbag system would be about $600, which represents a large cost increase for vehicles at the lower end of the price range. Ford also questions the effectiveness of airbags in any size vehicle, the public acceptability of airbags, and the authority of the agency to issue an airbag only standard.

VW also opposed driver-side airbags for small cars, saying that the technology is not proven for those vehicles and the Department should set performance and not design standards.

AMC supported the concept of requiring driver side only automatic restraints. AMC, however, said that airbags should not only be required on small cars since it "was not aware of any technical information that suggests that restraint requirements are fundamentally variable as a function of car size."

Nissan argued that requiring airbags for small cars is unfair to purchasers of those cars "because people buy small cars for economic reasons and the small car buyer should not be singled out to pay for expensive devices." Nissan also argued that if drivers assume that the airbag provides sufficient protection, then they might stop wearing their manual belts which are needed for protection in rollover and other accidents.

Toyota restated its general opposition to mandated automatic restraints and its specific opposition to a design (airbag) standard rather than a performance standard. It further argued that airbag technology has not been developed for small cars.

Allstate said that automatic protection should not be limited to small cars, but should be available on all cars.

The American Safety Belt Council (ASBC) said that a lap belt should also be required for a driver-only airbag. It recommended that for the right front passenger position, an automatic belt should be required.

Honda said that more development time is needed and that the added cost of airbags will substantially increase the cost of small cars.

Renault said airbag technology for small cars has not advanced far enough. It recommended waiting for the results of the Breed research program.

Jack Martens recommended that all cars with a wheelbase of less than 101 inches be equipped with airbags and with either manual or automatic belts for all front seat positions. Cars greater than 101 inches would be equipped with either nondetachable automatic lap and shoulder belts or airbags.

Public Citizen argued that if drivers of small cars can readily be protected then it is even more unreasonable not to protect the passenger in small cars and drivers and passengers in all cars.

IIHS supported mandating driver-side airbags in all cars, if it would lead to full front airbags.

Center Seating Position. Ford suggested that six-seat cars would

probably no longer be produced if the center front seating position were required to be equipped with an automatic restraint. There is no known practical design for an automatic belt system that could be used for a three-position front seat. Hence, the only known automatic restraint system that could be used for the center position would be an airbag. Citing its concern about the hazards it believes would be posed by airbags to an out-of-position occupant, Ford indicated that it would probably choose to eliminate the front center seating position. The American Automobile Association (AAA), Chrysler, AMC and Consumers Union agreed that the center position should be excluded, noting that the agency's 1982 data show that 98.1 percent of front seat fatalities occur to persons sitting either in the driver's seat or in the passenger's seat next to the right door.

One commenter strongly urged that the front center seating position not be excluded from the automatic protection requirements since young children are the most frequent occupants of this position and thus would be the ones who would suffer the most from the absence of automatic protection.

Rescind

Those commenters who favored rescission opposed adoption of the other alternatives and vice versa. Since this section of the preamble discusses each alternative separately, the views of commenters who favored one alternative are not necessarily included as negative comments to the other alternatives.

Generally, rescission was favored by all automobile manufacturers and by all new car dealers. Insurance companies and health associations all favored some form of retention and thus opposed the rescission alternative.

Most of the individual commenters opposed automatic restraints, especially airbags, on the basis of excessive government interference, high cost, and fear about the failure of airbags to operate properly. A very substantial number of these commenters were GM stockholders or employees.

Automobile manufacturers favored the standard's rescission on several grounds; that it was not as effective or cost-effective as mandatory belt use laws, that it unnecessarily would add to vehicle costs without commensurate benefits and that the technologies available for compliance would be rejected by the public as being too costly or intrusive.

For instance, Ford said that it could not support mandatory passive restraints by either amending or reinstating FMVSS 208 because of serious questions on restraint effectiveness and consumer acceptance.

GM said that detachable automatic belts are unlikely to increase belt usage and nondetachable belts would be rejected by the public. Because of technical concerns regarding airbags, particularly for out-of-position occupants in small cars, and because reinstatement would divert engineering resources from the development of passive interiors, GM believes the automatic occupant protection requirements should be rescinded.

The Automobile Importers of America (AIA) favored the adoption of mandatory use laws and said that questions of consumer acceptance, particularly regarding airbag technology and consumers' fear of entrapment, still need to be addressed.

BMW said that the passive restraint issue should be "decided in the free market" and not by regulation.

One airbag supplier, Breed, recommended that the agency retain the current manufacturer option of installing either manual or automatic restraints. The commenter believed that this approach would impose minimal costs on the car manufacturers. After this supplier's airbag has been proven in more field tests, it believed that many car manfacturers would elect to provide airbags as readily available options.

The automobile dealers urged rescission because they thought that car purchasers are unlikely to accept automatic restraints. NADA cited the VW and Toyota experience with automatic belts and GM's experience with automatic belts and airbags as support for this contention. NADA also said automatic restraints would have an adverse impact on sales.

Most insurance companies and most consumer, medical and safety organizations opposed rescission or suspension, whether taken as a single action or in conjunction with a demonstration program or seeking legislation to mandate a consumer option, but organizations such as the Pacific Legal Foundation favored rescission. The PLF argued that the data did not support the Department's analysis of the effectiveness of automatic restraints.

State Farm said that a decision to rescind would be arbitrary and capricious. They referenced Professor Nordhaus' study as showing that rescission would impose enormous net costs on society. Nordhaus said that, for every year during which no automatic protection is required, it will cost society $2–2.5 billion. The American Association for Automotive Medicine said that "from a public health perspective, maximum protection requiring no action by the occupant is obviously preferable and desirable."

Congressman John Dingell argued that as long as the Department applied a reasoned analysis, rescission is possible and the best course to follow. Congressman Timothy Wirth contended that the statute requires that DOT move forward as promptly and expeditiously as possible to the implementation of meaningful automatic crash protection.

Joan Claybrook, of Public Citizen, said that there is more information on the benefits of automatic restraints than on any standard ever issued by NHTSA. Consumers Union "strongly" urged DOT "to promulgate promptly" FMVSS 208.

Demonstration Program

Ford argued that the effectiveness of automatic restraints could be determined only after a large-scale demonstration program is conducted. It proposed a program for the installation of automatic restraints in five percent of the new car fleet over a four-year period. The comments of several other manufacturers suggested that they would not oppose a demonstration program.

Ford said that the SNPRM misstated its proposed demonstration program requirement as at least five percent of each manufacturer's annual production for four years. Ford corrects this to mean an average of five percent of annual production manufactured for sale in the U.S. over a period of four years. Ford continues to believe that its proposal is the most effective means to resolve the stalemate on how best to improve occupant protection.

In response to the SNPRM, AMC said that a demonstration/test program similar to Ford's proposal is absolutely necessary prior to any effective date for requirement of automatic restraints. In the interim, the automatic restraint requirements should be suspended and a rule drafted so that rescission would occur if the findings of the test program were negative. AMC supports a demonstration program, but it does not feel that a mandatory program should necessarily be imposed on all low-volume car manufacturers. In some cases, the minimum added information to be gained would be more than overshadowed by excessive resultant cost. A five percent program for a two- to four-year test period would be acceptable, utilizing various automatic restraint systems for the driver only. AMC could launch such a program between early 1987 and fall 1987.

VW endorses a demonstration program and proposes an alternative plan, which would give credit to manufacturers that have already produced large numbers of automatic restraint cars. VW also said that any demonstration program should permit automatic belts to continue to be permitted. VW said that DOT should take into account the fact that costs will be higher for smaller manufacturers and that DOT has proposed no mechanism to "guarantee" that the public will buy automatic restraints.

Chrysler prefers mandatory seat belt use laws. If there is a demonstration program, companies would need adequate time to evaluate test results regarding airbag performance and public acceptability. Chrysler will coöperate in such a program, with up to 5 percent of its production for MY 1987 and 1988, provided that it applies to all domestic and foreign manufacturers. Chrysler believes there should be an automatic restraint for the driver only and that the program should only require a manufacturer's "best effort" to sell five percent of its total production, all on one car line, with appropriate pricing to validate public acceptance.

Volvo said the idea has some merit, but any airbag system should be for the driver only. The five percent figure should apply to total vehicle sales, not to a percentage of each car line.

Renault said that the program would produce concrete evidence in an uncertain area and that it should apply to foreign manufacturers selling more than one million vehicles per year in the U.S.

Honda said the program should be voluntary and include ways to encourage use of manual belts. Honda believes there are R & D problems that must be solved prior to an automatic restraint mandate. Honda opposes the requirement of two kinds of tooling on production lines and views the five percent requirement as unreasonable, regardless of demand.

Lotus said that since it imports only 300 cars into the U.S., at five percent, there would be 15 Lotus autos involved. It suggests an exemption for manufacturers selling less than 10,000 cars per year in the U.S. It points out that this is the small manufacturer definition used by EPA, and that DOT has overlooked the impact of this proposal on small entities, including manufacturers and dealers.

BMW would not be adverse to the program, if the manufacturer has a choice of driver-only systems, a choice of restraint type and vehicle models, and the initiation of the program was not earlier than September 1986.

Mazda suggested that DOT limit the program to high-volume production vehicles and to models produced in volumes exceeding 200,000 units per year. This will permit recovery of investment and development costs.

Peugeot said that the demonstration program is the best approach. Peugeot believes that conclusions can be drawn four years after implementation and that the program must take into account both manual and automatic restraints. The only disadvantages of the demonstration program are economic, but this can be alleviated by letting the manufacturer choose 5 percent of each model, or 5 percent of one model.

The American Seat Belt Council said that the program should be used only for airbags to determine market suitability. Any automatic belt system should be permitted to be detachable.

The Pacific Legal Foundation (PLF) said that if DOT is to proceed with the automatic occupant protection issue, it should use the demonstration program to acquire a data base.

General Motors (GM) said that a mandatory automatic restraint demonstration program does not answer the basic question of whether the public will accept or use automatic belts or accept the higher cost of airbags.

AMC said in response to the NPRM that it was inappropriate to require a small company like AMC to participate in a demonstration program.

Toyota was generally opposed to a demonstration program. However, if one were undertaken, the DOT program should: (1) Contain performance, not design, requirements; (2) permit the manufacturer to select the car lines to be affected; and (3) have the same requirements for all manufacturers, small and large.

Nissan said that the problem with the program is that sales projections of any percentage are impossible to forecast. Only customer preference can dictate the numbers sold. But if the program is mandated, then: (1) Nissan would need 30 months leadtime; (2) it should permit either automatic or 3-point belts; (3) let the manufacturers decide the type of restraint on any model; and (4) it agrees with Ford on amending the test injury criteria.

NADA said that automatic restraints have not been proven to be more effective than manual belts and that a demonstration program was a counter-productive idea due to delays in implementation (21 to 42 months) and assessments (6 to 8 years), which would divert manufacturer resources. It would also have an adverse effect on franchised dealers, who would have to attempt to sell the automatic restraint equipped cars.

IIHS opposed the program because it does not meet the statutory responsibility of DOT. There would be no economies of scale; therefore, higher costs could result. However, if it were done very quickly, the program could be a useful supplement to this rulemaking. IIHS reiterated its belief that a mandatory automatic restraint standard was needed as soon as possible.

Allstate said that a demonstration program could delay the safety needs of the public for 7 years, 4 for the demonstration, and 3 for lead-time to equip the rest of fleet.

State Farm said such an alternative was unlawful, irrational, arbitrary, and capricious. Adoption of the Ford proposal would impose a costly, harmful, and unjustified delay.

The National Association of Independent Insurers (NAII) opposed the program as a form of delay.

The Center for Auto Safety (CFAS) said the demonstration is outside the limit of DOT's statutory authority, as illustrated by former Secretaries Volpe's and Brinegar's requests to the Congress for explicit authority for a standard's phase-in based on percentage of production. The CFAS said that NHTSA has recognized that percentage phase-in is of questionable legality, citing the DOT brief in *PLF* v. *Adams*, 593 F.2d 1338 (D.C. Cir. 1979).

Public Citizen said that a demonstration was not authorized by the Act.

The Breed Corporation said that a mandatory demonstration program, since it would result in a safety standard which did not apply to all motor vehicles of a particular type, would be unlawful.

Mandatory Belt Use Laws

General. Almost all car manufacturers supported belt use laws in lieu of some form of automatic restraint requirement. They stated that these laws would be the most effective and least costly approach. The automobile dealers also supported these laws. Most individuals who oppose automatic restraints and supported an alternative named belt use laws as that alternative.

The American Seat Belt Council said that belt use laws would be the most effective approach, but expressed the belief that some sort of financial incentive would be necessary to get individual states to consider passage of such laws. Congressman Dingell supported belt use laws and noted his bill to encourage state enactment of them.

Many vehicle manufacturers and other commenters noted that belt usage laws would begin producing benefits over the entire fleet of cars on the road as soon as the laws became effective. By contrast, they noted, the benefits associated with automatic protection would accrue only as new vehicles equipped with automatic protection were added to the fleet of vehicles in use. It would take at least ten years for cars equipped with that type of protection to fully replace nonautomatic cars. Because of this factor, many commenters suggested that the agency mandate automatic restraints, to provide that protection to occupants of new cars, and seek belt usage laws, to provide increased protection to occupants of older cars.

The Motor Vehicle Manufacturers Association (MVMA) and several individual manufactures stated that the minimum criteria specified in the SNPRM for belt usage laws deny state legislatures the flexibility to design belt use laws consistent with the demographics, motor vehicle statutes, and law enforcement practices of the individual states. These commenters suggested that rather than DOT specifying the means which must be used to achieve the goal of increased belt usage, it should simply specify the desired end (in terms of the percentage of front seat occupants wearing their belts) and allow the state legislatures to select the most effective means to that end for their particular state.

Several insurance companies opposed safety belt use laws as a substitute for the automatic restraint requirement because all front seat occupants of a car equipped with automatic restraints would be protected while a belt use law would protect only those front seat occupants who complied with it. The insurance companies, Congressman Wirth, and Public Citizen argued also that safety belt use laws were not an alternative that would satisfy the Safety Act or the *State Farm* decision. However, the insurance industry generally favored these laws as a supplement to an automatic restraint requirement.

Although virtually all medical and health organizations opposed substituting safety belt use laws for the automatic restraint requirement, they noted that recent experience in Canada and Great Britain has shown that introduction of these laws produced sizable reductions in injuries and deaths.

Both the Insurance Institute for Highway Safety (IIHS) and the Pacific Legal Foundation (PLF) submitted studies indicating that while belt use laws do increase usage, the resulting reductions in deaths and injuries are proportionately smaller than increases in usage. These studies led both groups to conclude tentatively that the population with the greatest likelihood of being in vehicle accidents is also the least likely to comply with belt use laws. A similar point was made by New York Insurance Superintendent Corcoran. Hence, both groups urged DOT not to overstate the benefits that would result from belt use laws. Ralph Nader opposed safety belt use laws as an alternative because of his belief that such laws would not be adopted by the states and would not be complied with by those who most need to buckle up.

As to the question of the likelihood of enactment of state safety belt use laws, IIHS said that the closest analogy was not the child restraint use laws or the recent wave of more stringent drunk driving laws, but the motorcycle helmet use laws that have been repealed or weakened in a significant number of states.

Several commenters including the National Association of Governors' Highway Safety Representatives (NAGHSR) stated that the DOT approach was fundamentally wrong in that it sets automatic restraints and belt usage laws as an either/or proposition. These commenters argued that both of these requirements are needed to ensure maximum use of restraints by front seat passengers. Further, these commenters asked why the Federal government was intruding on the states' prerogative to shape the usage laws by specifying minimum criteria.

The Governor of Wyoming stated that there was little or no chance of ever passing a belt usage law in that state, and recited a list of enforcement problems which would be posed for that state if it were to pass a belt usage law.

The insurance companies generally argued that DOT's options of pursuing belt usage laws were illegal as an abdication of DOT's statutory responsibilities. The proposals in the SNPRM, it was argued, would result in a lack of uniformity nationwide. As a practical matter, these commenters believed that either of the options which would eliminate the requirement for automatic restraints if states passed belt usage laws would encourage manufacturers to develop the cheapest automatic restraints which would satisfy the standard, since it was possible that the manufacturers would never be required to put these restraints in their vehicles and they would thus wish to minimize any investment losses. It was also stated that these systems would be the least effective automatic restraints. The insurance companies noted the serious enforcement problems which belt usage laws would impose on the states. IIHS stated that there is no evidence anywhere in this record to support the claims that belt usage laws would be obeyed without vigorous enforcement, and such enforcement would be a headache for the states. Their researchers found that in New York, where an administrative regulation requires holders of learner's permits to wear their belts while driving, thirty-nine percent, thirty-two percent, and six percent of drivers with learner's permits actually wore their belts at three different locations. Further, IIHS noted that, as of the time of their docket submission, no state had yet passed a belt usage law and such laws were being considered in only 11 states.

Volvo responded to the claim that belt usage laws would not protect those who are most likely to be in accidents, and that therefore belt use laws will not achieve the reductions in deaths and injuries which would accompany a particular level of belt use. Volvo argued that these drivers would also be the most likely to defeat any automatic belts, and so would not be protected by those restraints, and the most likely to be in rollover crashes, in which they would not be protected by airbags.

SNPRM Alternative: No Automatic Restraints Required In A State That Passes An MUL. The manufacturers generally opposed this alternative on the grounds that it would create major distribution problems, it would create serious enforcement problems for the states (for instance, will residents of a state be permitted to cross the border to purchase a car equipped with the restraint system they want?), and it would force the manufacturers to produce two different types of otherwise identical vehicles.

The State of Washington asked why DOT would waive an automatic restraint requirement, and stated that it believed the existence of automatic restraints would be as much of an incentive to pass a mandatory belt use law as would a waiver. Similarly, NAGHSR stated that the waiver would be an administrative nightmare for the states, and that this waiver would make it difficult for a consumer to purchase a car with automatic restraints if the state has a mandatory use law.

NADA stated that this alternative would create uncertainty and a patchwork pattern of automatic restraint requirements, which would cripple product planning, pricing, advertising, and distribution.

A Michigan legislator and the Michigan Secretary of State supported this proposal, saying the most effective protection available to front seat occupants is the manual belt already in the vehicle.

SNPRM Alternative: Automatic Restraints Required Unless 75 Percent of States Pass Mandatory Belt Use Laws by a Certain Date. The manufacturers strongly objected to this alternative, since they would be forced to immediately begin investing time and money on a device which might never be needed. They said that this alternative would raise car prices even if the automatic restraints were never required. The manufacturers also stated that the progress reports were an unnecessary burden, since a manufacturer that was not prepared to install automatic restraints when those were required would be completely forced out of the market until such time as it could install automatic restraints. That is incentive enough to ensure that the manufacturers will be ready to install those restraints.

Ford would change this alternative to suspend FMVSS 208 while a good faith effort is made to pass mandatory use laws, and, if this is unsuccessful, specify an effective date for FMVSS 208. Volkswagen (VW) suggests setting an effective date on a sliding scale after seeing if enough states pass mandatory use laws. For instance, if ten percent of the states have not passed mandatory use laws in two years, Standard 208 would become effective three years after that date, if 25 percent had not passed mandatory use laws in 4 years, Standard 208 would become effective three years after that date, and so forth. American Motors Corporation (AMC) would amend the alternative to specify no automatic restraints when seventy-five percent of the driving public is subject to mandatory use laws or when seventy-five percent are using the manual belts in their vehicles.

The National Automobile Dealers Association (NADA) stated that there is no basis for imposing automatic restraints, whether or not seventy-five percent of the states pass a mandatory belt use law.

The insurance companies wondered how DOT had decided that residents of twenty-five percent of the states could be left without enhanced occupant protection in their cars when the record was so clear on the need for enhanced protection. The National Association of Governor's Highway Safety Representatives (NAGHSR) stated that Federal intrusion was not needed to get states to pass mandatory use laws.

Two Michigan officials stated that the seventy-five percent figure should be lowered, since it was doubtful that it could be achieved, and argued that greater flexibility should be allowed to the states.

Test Procedures

Repeatability

Most automobile manufacturers raised several issues concerning the automatic occupant protection provisions of FMVSS 208. Statements were made that the test procedures, in general, fail to meet the "objective" criterion of the statute. Suggestions were also offered to change the procedures, the anthropomorphic test dummy, and the standard's injury prevention criteria.

Manufacturers stated that the test procedures do not produce repeatable results. Relying on data from the agency's New Car Assessment Program (NCAP) repeatability tests, the manufacturers argued that there is substantial, uncontrollable variability in the test results. As a result, they argue that the standard is not practicable.

NHTSA's New Car Assessment Program, which is an experimental program designed to develop consumer ratings of vehicle crashworthiness, is similar in test procedure to FMVSS 208 in that it uses instrumented Part 572 test dummies to ascertain potential injuries to human occupants in a frontal barrier crash. The program differs from FMVSS 208 in that its purpose is to rate cars. Therefore there is no minimum level of performance specified as in FMVSS 208, and the tests are conducted at 35 mph instead of the safety standard's specification of 30 mph.

In 1983, NHTSA conducted tests to determine the repeatability of test results from the NCAP. Twelve Chevrolet Citations were tested in three different laboratories (four in each laboratory) to help determine the magnitude of variability surrounding a single test result. GM supplemented the agency's program by crashing an additional four Citations at their own facilities.

In commenting on the October 1983 NPRM, American Motors (AMC) referenced the NCAP repeatability tests and stated that based on the high degree of variability in injury criteria test results, the FMVSS 208 test procedures were "unacceptable" and lacked the necessary objectivity required by a safety standard. To compensate for this large variability, AMC suggested the agency use a "design-to-conform" approach as a means of compliance.

Chrysler also stated its concern over test repeatability and variability, as evidenced in the NCAP program, and argued that testing airbags under the current test procedure could lead to even greater variability. Chrysler suggested testing airbags with a belt, exempting the front center seat from any passive requirements, eliminating the 30 degree oblique test and waiving all injury criteria.

Volkswagen (VW) referenced the NCAP repeatability program and concluded from its results that the current test procedures were "not appropriate", particularly for safety belts. VW argued that the test procedures, and the dummy, were developed for testing compliance with airbags. It suggests that the procedures be revised to only use dynamic testing if a vehicle is equipped with airbags.

GM also spoke of excessive variability and stated that the test procedures must be improved. GM urged NHTSA to approve its petition to use the Hybrid III dummy as an alternative test device and to develop different compliance tests for different technological safety improvements.

Ford claimed that the test procedures are neither objective nor practicable and, based on the NCAP tests, manufacturers would have to "overdesign" their vehicles to ensure that all vehicles were in compliance. Ford stated that the procedures do not comply with the Court's ruling in the *Chrysler* case that test procedures must be capable of producing identical results when test conditions are exactly duplicated. Ford argued that repeatable results are impossible to achieve with the current FMVSS 208 test procedures. The company supplied results of early 1970's sled tests to show that variability was inherent in the test procedures and test dummy and was not solely related to vehicle-to-vehicle differences. Ford suggested that test variability could be compensated for by using a design to conform approach, eliminating the 30 degree oblique test, not dynamically testing automatic belts, changing the FMVSS 210 anchorage location requirements, and testing airbags with a belt.

MVMA emphasized their concern that the NPRM failed to address the issue of test repeatability. Its concern was based on the NCAP test results. MVMA urged the agency to publish a supplemental notice to address the issue.

Several commenters to the NPRM suggested that there was no reason to be concerned over test procedures or repeatability. Byron Bloch, an automotive safety consultant, pointed out that cars are designed using crash tests and sophisticated dummies, and he

supplied the text of a GM advertisement to that effect.

The Insurance Institute for Highway Safety (IIHS) reviewed the results of the NCAP repeatability test program and concluded that these tests "produced repeatable results when the correct procedures were adhered to * * *"

Allstate Insurance Company claimed that the current test procedures assure individual purchasers of automatic restraints of protection and that the agency should also test manual belts dynamically.

Because of the above, the issue of repeatability, as well as other test procedure concerns, was raised in the SNPRM. In the SNPRM, the Department stated that it believed that the Part 572 test dummy was not a major source of the variability found in the NCAP repeatability tests, that the proposed adoption of two of the NCAP procedures into FMVSS 208 would further reduce variability, and that additional changes in the test procedures to reduce variability were not necessary. Any remaining variability was assumed to be due largely to vehicle-to-vehicle differences, which are outside the control of the Department.

In commenting on the SNPRM, auto manufacturers took exception to the Department's conclusions.

Ford reiterated its prior arguments about repeatability and criticized the agency for not clearly setting out what are the proposed NCAP changes to the 208 standard. It characterized what it understood to be the revisions to the NCAP test procedures as minor, subjective and unverified. Ford said that the agency was still conducting its repeatability research study and questioned how the agency could conclude that the test dummy is not a major source of variability.

Ford further argued that the agency had not shown that the "test device and test procedure are separable in their influence on test results from the performance of the vehicle, so that any variability in test results 'must be' attributable to vehicle-to-vehicle differences in manufacture or performance."

Ford also argued that overdesign should be used only to compensate for manufacturing variances, which can be estimated and controlled for by the manufacturer and that overdesign should not be required of manufacturers because of deficiencies in test procedures.

Ford concluded that the test procedures were "flawed," that variability was inherent in barrier crashes and was likely "irreducible," and that the current procedures, with their large associated test result variability, placed a manufacturer in "unacceptable jeopardy" in terms of assuring compliance with the standard.

The company also claimed that "comparable variability," to that observed in the NCAP Citation tests would be expected for other models. It based its conclusion on the coefficient of variation (COV) of 33 Mercury airbag sled tests, scaled at 35 mph, and seven Volvo barrier crash tests.

GM said that the driver HIC results of the NCAP repeatability tests, which incorporated the test procedure changes proposed in the SNPRM, already demonstrate that the range of variability is too large. GM argued that the amount of variability is not due to vehicle differences. It referred to a series of controlled sled tests it conducted, in which the coefficient of variation of the HIC data was as high as 11 percent for the driver and 8 percent for the passenger. For the NCAP series, the COV was 21 percent for the driver and 11 percent for the passenger. GM said that a comparison of the two data sets shows that the major portion of the variability is test-related, not vehicle-related.

GM argued that because of the variability, the amount of overdesign needed to provide a reasonable certainty of compliance would be impracticable. It said that the design level of HIC protection could not be justified in terms of a "minimum" safety requirement. GM said that it does "not believe that a practicable dynamic test requirement can be devised to provide manufacturers with the assurance of 'certainty' specified by the *Paccar* court. The only solution may be the one suggested by that court: '* * * it must propose some alternative method for those manufacturers which, if followed, it will recognize as fulfilling the due care requirement.' "

Mazda commented that the NCAP repeatability study dealt with a compact size vehicle, which has more available crush space than a subcompact. It recommended that a similar repeatability study is necessary for subcompact vehicles. Mazda agreed with NHTSA that adoption of the NCAP test procedures would eliminate some of the existing variability, although further refinements are possible.

American Motors said that adopting the NCAP modified test procedures cannot be expected to reduce test variability since the modifications are minor. AMC said that there are other test variables, such as safety belt tension and actual dummy position just prior to impact, that have a similar effect on dummy positioning, but those variable are not controlled for in the test procedure.

AMC also claimed that because of the lack of repeatability in the FMVSS 208 test procedures, the standard does not meet the requested statutory criteria. AMC believes the above because the unreliability of test results demonstrated in the NCAP program are "indicative" that a similar level of variability will exist in FMVSS 208.

Peugeot stated that it "can but reluctantly accept as valid a test procedure" with a COV of 21 percent. It suggested that the level of performance (e.g., HIC criterion of 1000) be raised by the amount of variation.

Chrysler, based on the NCAP data, concluded that the test procedures are not capable of producing identical results when a given vehicle is repeatedly tested. They believe the current procedures only measure a manufacturer's ability to conduct the test and do not measure the adequacy of the restraint system. Chyrsler said that because differences in dummy foot placement and ambient temperature make a difference in test results, the test is not practicable. Chrysler also argued that the agency must develop a test which takes into account the inherent crash variability of the vehicle itself.

Volvo said that the modified NCAP procedures only address a portion of the variability and that it has not been demonstrated that the new positioning requirements will in fact result in a repeatable positioning of the test dummy. It noted that the procedures do not ensure that the same webbing location is used in each test. Volvo also said that because of the effect of temperature on dummy performance, either the permitted range for crash testing must be narrowed or new materials be used in dummy construction. Volvo also said the NCAP repeatability program shows that there is a certain amount of unreliability in the signals obtained from the accelerometers and that different laboratories have used different methods to process crash data.

Volvo also supplied the results of 10 sled tests in which there was a stable crash pulse and no contact between the dummy's head and vehicle interior, thus eliminating most vehicle-to-vehicle parameters. The mean HIC was 466.5 with a COV of 12.5 percent.

Nissan said that under the current test procedures, it is difficult to maintain the same relative positioning of the test dummy for several tests. It recommended that the agency maintain the same initial relative measurements between the dummy and steering wheel

and instrument panel for each test of a particular model. It also said that the positioning of the seat belt should correlate to design measurements submitted to the agency by manufacturers. It urged changing the seat position requirement (it is currently set at the mid-position) since passengers in small cars tend to move the seat rearward. Nissan recommended that the measurement between the hip point and ankle should be constant for the positioning of the seat.

Toyota said there are still unresolved problems concerning the variability in electronic crash data collection systems. It also recommended that the test procedure specify the "timing of dummy installation prior to crash * * *. Such timing will affect test results depending upon the extent of the breaking-in (sic) between the dummy's hip and the seat materials."

Mercedes said that the Part 572 dummy is not sufficiently repeatable for compliance test purposes, that the Hybrid III dummy provides no improvement in this regard and that adoption of the NCAP test procedures is a step in the right direction.

Volkswagen also contended that the variances resulting from the NCAP repeatability tests were too large for compliance test purposes of a safety standard. VW argued that overdesign to comply with FMVSS 208 has nothing to do with improved safety but only costs the company time, effort, and money in overcoming the inherent variability in the test itself.

Renault said that the current COV of 21 percent (which permits a variation of 63 percent) is too large; it said the COV should not exceed 10 percent. It said that as long as the COV remains at 21 percent, the HIC limit should be raised by 63 percent.

MVMA again reiterated its concern over test variance and said that FMVSS 208 is not objective.

IIHS said that overdesign is standard industry practice and current test data show that compliance is "easily achievable."

Allstate again contrasted the lack of any dynamic testing of seat belts with the detailed test procedures for testing of automatic restraints. It cited the *Public Citizen* v. *Steed* decision on tire treadwear grading (UTQGS) for the proposition that "no test procedures * * * are going to approach perfection." Allstate said that it seemed "strange" for the Department to be concerned over "minute details" of test procedures and to refuse to implement FMVSS 208 because of minor test details would be absurd. Allstate said that the test procedures were developed over many years and have proven highly acceptable.

State Farm concurred with the SNPRM analysis of crash test variability and cited the UTQGS decision as undercutting the manufacturers' arguments.

State Farm concluded that FMVSS 208 is both practicable and objective, that the test procedures have been subject to court challenge and have been improved, and that the results of the NCAP repeatability program were conducted at 35 mph, not 30 mph as in FMVSS 208, where the vehicle must absorb 36 percent more energy. They said testing at 30 mph should result in less variance as well as lower readings.

British Leyland suggested "that at this point in the rulemaking process, the subject of test procedures is not supremely important for discussion * * *"

Design to Conform

Because manufacturers believe that the variability in test results, particularly HIC, is so large that extensive overdesign would be required to ensure that all vehicles would comply with the standard, the concept of "design to conform" was suggested as a more appropriate measure of compliance.

Both Ford and American Motors suggested this concept in response to the NPRM. Ford said that to overcome the unacceptable jeopardy of being in noncompliance, as a result of the test procedure's lack of objectivity, compliance should be based on the design-to-conform concept, similar to that used in FMVSS 108. AMC favored the design-to-conform approach for the same reason as Ford, and also said that excessive variability was the same reason design-to-conform was adopted in standard 108.

In the SNPRM, the Department sought public comment on whether an approach which required a manufacturer to show that a vehicle was "designed to conform" to FMVSS 208, instead of requiring actual conformity with the standard's requirements, could be reconciled with the Sixth Circuit Court of Appeals decision in *Chrysler Corp.* v. *DOT*, 472 F.2d 659 (6th Cir. 1972), wherein the Court stated that compliance should be "obtained from measuring instruments as opposed to the subjective opinions of human beings," 472 F.2d at 676, and that "compliance be made by specified measuring instruments; there is no room for an agency investigation in this procedure." 472 F.2d at 678. Since the design-to-conform approach would require the manufacturer to justify to NHTSA that it had taken reasonable steps in the vehicle's design and testing to certify that it had been designed to conform to the standard's requirements, it appeared that adoption of this proposal would introduce unacceptable levels of subjectivity, contrary to the *Chrysler* court's direction, into what was heretofore an objective compliance procedure. Comments were also sought on the potential effects on vehicle design and construction under a design to conform approach.

Responses to the SNPRM by manufacturers showed agreement with the concept of design to conform as applied to FMVSS 208. Ford argued that if Standard 121, regarding air-braked heavy trucks (subsequently overturned by the courts) had had a design to conform provision, "it might well have been judged to be practicable, for manufacturers would have had the assurance that bona fide results of their own compliance tests would have to be taken into account in determining whether their products were in fact noncompliant." It said that dictum in *Wagner Electric* supports the lawfulness of a design to conform alternative to a strict compliance scheme.

Ford said that adopting a design to conform approach would not "materially" affect a vehicle's design and that its main effect would be to permit a manufacturer to not be judged in noncompliance based on failure to meet the specified injury criteria in a single test, if the manufacturer had *bona fide* test results to verify that the designed level of performance had been achieved.

GM also supported the design to conform concept. GM argued that such a concept does not contravene the *Paccar* decision. It said design to conform is "compatible with the court's finding that all relevant factors must be considered in establishing a standard and would not require manufacturers to overcompensate for test variability to assure compliance."

GM added that a design to conform requirement would not materially change a manufacturer's approach to assuring conformity with FMVSS 208. GM believes that a manufacturer would still be required to demonstrate that the performance of its design would meet the requirement. GM also said that the philosophy of adopting design to conform in FMVSS 108 was based on the recognition of test variabilities and thus applies equally well to this standard.

VW said that it was uncertain about the effect of adopting design to conform language in the standard. VW

contrasted what it called the accurate and precise test of Standard 108 with the variable test procedure of Standard 208. VW also believes that the Department essentially operates under such a concept.

Mercedes, Renault, and MVMA supported adoption of a design-to-conform standard.

Peugeot termed the concept "interesting" and said that NHTSA's concern was understandable. Peugeot suggested that an indepth study of the "reasonable steps" a manufacturer should take might be necessary.

Jack Martens, an automotive safety consultant, opposed a switch to a design-to-conform standard arguing that there will no longer be any means to ensure that the vehicle as purchased meets the performance requirement.

Thirty Degree (30°) Oblique Test

In commenting on the NPRM, both Chrysler and Ford suggested deleting the oblique test requirement in the standard. Ford argued that the test is redundant, since dummy readings are lower than in perpendicular barrier crashes, that it not only adds to development costs and time but also increases test result variability, and that it is a hindrance to airbag development. Chrysler's recommendation for deletion also was in the context of airbag development.

Although not directly addressing the test requirement, Renault said that airbags are not as effective as manual belts in oblique crashes and that their effectiveness limit corresponds to the 30° barrier impact conditions. Beyond 30°, Renault believes, airbag effectiveness is slight or nonexistent.

Peugeot claimed that airbags are less effective than manual belts at oblique crashes of 25 to 30 degrees, while Allstate said that the field experience with airbags indicates that they will be effective in crashes at frontal angles of 30° or greater.

The Department, in the May 10, 1984, SNPRM, voiced its own concerns over the necessity of the 30° oblique test to assure proper passive restraint performance. NHTSA test data indicate that the instrumented dummy readings in such tests are consistently lower than in direct frontal barrier crashes due to a less severe crash pulse. Although the original rationale for the requirement appeared to be to ensure that car occupants were protected in oblique crashes, the data available to NHTSA indicated that the 30° test was unnecessary to achieve that goal. That is, the protection was provided regardless of whether or not the test was conducted. The elimination of the oblique test was proposed in the SNPRM and specific data were sought to support commenters' positions on the issue.

Most of the auto manufacturers and several other commenters offered remarks on the proposal. However, the manufacturers' opinions were split into three categories—in favor, against, or retain the oblique test but eliminate the direct frontal barrier crash requirement.

Ford restated its belief that the oblique test is redundant and merely adds to the cost of testing, adversely affects leadtime and adds more unpredictability to the testing.

Ford referenced material it had submitted to NHTSA previously which contained data on 30° angular vs. frontal tests. These data related to Ford's 33-car barrier crash tests of 1972 Mercury airbag vehicles. Ford's February 1976 report on the subject, "Airbag Crash Test Repeatability" (ESRO Report No: S-76-3), stated that the results of the angular crashes were lower in magnitude and had less variability than the frontal crashes. In twelve frontal tests, average driver and passenger HIC values were 479 and 462, respectively. In angular tests, the respective means for HIC were 185 and 330, well below the values in the frontal crashes.

Favoring the deletion of the oblique test, due to its stated redundancy and its adding to costs, lead-time, and variability, were BMW, Volvo, Nissan, Mercedes, Honda, and Mazda. Mazda supplied data which showed a driver HIC of 779 and a passenger value of 758 in a frontal crash test using an experimental two-point passive belt while the corresponding values in the angular test were 488 and 302. Mercedes also stated that the oblique test is an obstacle to producing airbags.

Peugeot and Renault supported retention of the oblique test, arguing that it is more representative of the majority of actual crashes, and deletion of the perpendicular test. They stated this would be harmonized with a European regulation (WP 29/R237/REV 1).

Two manufacturers opposed the elimination of the test outright, while a third expressed concern over deleting the oblique test for airbag-equipped cars.

GM opposed deletion of the oblique test. It said that while "most angular tests would result in lower injury numbers than obtained from a perpendicular barrier test, angular tests are more representative of the variety of frontal crashes that actually occur in the field."

GM further stated that it was their experience that the oblique test is "important in the evaluation of airbag performance."

Saab also opposed its deletion, terming the proposal "a way to cover up for a weakness in the airbag system." Saab stated that a test requirement must cover a large part of real world accidents.

VW supported, with reservation, the proposal to delete the 30 degree oblique test. VW recommended dropping the perpendicular test since the forthcoming Economic Commission for Europe (ECE) regulation on crash protection will only have an oblique test. VW said that an oblique test should be retained for vehicles which do not include upper torso belts, that is, airbag equipped cars.

The CFAS opposed deletion of the oblique test since it could compromise occupant protection.

IIHS supported the deletion of the oblique test if its elimination will promote the use of airbags.

The Breed Corporation favored the deletion of the oblique test, citing confidential data it had seen from manufacturers.

Adequacy of the Part 572 Dummy

In its December 1983 response to the NPRM, GM said that better diagnostic tools are needed to assure improved occupant safety, including better dummies. GM argued these tools should lead to improved test result repeatability. According to GM, the Part 572 dummy "is deficient as a tool on which to base assessments of the potential of all occupant protection technologies." GM believes their development of the Hybrid III dummy provides for such assessments and, as part of their response, petitioned NHTSA to permit the use of the Hybrid III dummy as an alternative test device (i.e., as a substitute for the Part 572 dummy) in measuring compliance with FMVSS 208.

Although not responding directly to the relative adequacy of the GM Hybrid III dummy, the Department concluded, in the SNPRM, "that the test dummy [i.e., the Part 572 dummy] is a repeatable test device and is not a major source of the variability found in NHTSA's 35 mph repeatability test series." It was further stated that NHTSA would address the merits of GM's petition to permit the use of the Hybrid III as an alternative test device in a separate rulemaking action at a later date.

Several manufacturers took exception to the Department's conclusion that the Part 572 dummy was a repeatable test instrument and met the appropriate statutory criteria. Peugeot said that the current dummy is one cause of test

result variability and thus it does not meet the statutory criteria. But, since manufacturers need some reference test instrument, Peugeot said that even though its use is questionable, "it must be maintained."

American Motors described the dummy as "a state-of-the-art compromise—it lacks in reasonable measurement fidelity."

Volvo said that "the present Part 572 test dummy has serious limitations with respect to its use for determining compliance with FMVSS 208." Volvo believes design and material improvements are necessary to make the dummy more durable, repeatable, and trouble-free.

Toyota said that there was "uncertainty of the influence of [the] Part 572 dummy tolerances on crash test results" while Ford said that although the calibration of the dummy is repeatable, its performance in barrier crashes may not be. Ford questioned the Department's conclusion that the dummy is not a major source of variability.

GM again reiterated the potential benefits of the Hybrid III dummy and called for quick action on its petition, saying that a delay could hamper installation of new technology in its vehicles.

This view was supported by Nissan which said it believes the Hybrid III demonstrates greater repeatability than does the Part 572 dummy. Nissan believes the Hybrid III has a more controlled twisting motion and offers a greater degree of control and stability.

Mercedes disagreed with the conclusion that the Part 572 dummy satisfies all legal criteria because it is "not sufficiently repeatable for compliance test purposes." Mercedes also stated that "the Hybrid III provides no improvement in this regard."

Conversely, Renault said that it agreed with NHTSA that "the present Part 572 dummy is not the major cause of the dispersion of results."

Adoption of NCAP Test Procedures

As a result of its repeatability test program, NHTSA amended the test procedures (IP 212-02) for the New Car Assessment Program to reduce any variability associated with the test procedures themselves. Since the NCAP procedures are more specific than the current FMVSS 208 requirements (in terms of dummy foot placement, placement in the seat, etc.) and since the test procedure is an integral part of complying with the standard, it was proposed in the SNPRM that the NCAP test procedures, aside from those aspects solely related to the consumer rating program such as the need for high-speed cameras, testing at 35 mph, etc., be adopted in FMVSS 208. It was argued that the increased specificity of these procedures would further reduce any variability associated with the test procedures themselves.

Most manufacturers favored, or at least took no exception to, the adoption of the NCAP procedures, although many felt it would do little to reduce variability. AMC said that the changes associated with adopting the NCAP procedures were "very minor" and could not be expected to significantly reduce variability. AMC contended that other sources of test procedure variability, such as safety belt tension and actual dummy position just prior to impact, are still not accounted for in the NCAP procedures.

Volvo said that the procedures were "a step in the right direction" but doubted whether variability would be reduced significantly by their adoption. Volvo said that other sources of variability, such as belt geometry and identical dummy positioning, still exist.

Nissan did not comment on the adoption of the procedures themselves, but also stated that dummy positioning may not be properly specified. To aid in this regard, Nissan recommended that dummy placement be further specified by dimensions of dummy-to-car part distances.

Toyota deemed the adoption incomplete and said that the timing of dummy installation prior to impact and the extent of the breaking-in between the dummy's hip and the seat materials was also important.

Mercedes, as did Volvo, said that the NCAP procedures were "moving in the right direction."

Conversely, VW said it "has no confidence that the changes proposed will cause a significant reduction in * * * variability" and that the Department has not provided any data to show that variability will be reduced. The lack of data to support the contention of reduced variability was also cited by MVMA and Ford.

While Honda said that NCAP test procedures were "inadequate" to reduce variability, Renault stated it had "no objection" to their incorporation in FMVSS 208. Mazda agreed that there would be some reduction in variability with their adoption. Renault also asked whether all these types of problems are solved by their adoption.

MVMA, Ford and GM also claim that the latest revisions to the NCAP test procedures, dummy foot placement and seat placement, were already incorporated when the repeatability tests were conducted by NHTSA; thus, no reduction in variability from the values shown in those tests could be expected from their adoption. Ford also contended that adequate public notice was not provided on this issue since the precise NCAP procedures to be incorporated in FMVSS 208 were never specified.

Head Injury Criteria (HIC) Measurements

The SNPRM sought public comment on whether HIC should be measured in the absence of the dummy's head contacting the vehicle interior. It was pointed out in the notice that the historic derivation of HIC was based on the head striking something. It was also noted in the SNPRM that NHTSA had permitted, for belt systems, the compliance with the HIC criterion only when head contact was made and only for the duration of head contact. The Department pointed out that because of some conflicting data and because it believed that a non-contact HIC criterion act as a surrogate for neck injury, it was not proposing to change the standard.

Peugeot, AMC, Volvo, Mercedes, VW, Renault, MVMA, Ford, GM and Mazda favored eliminating measurement of HIC in the absence of head contact. Only Allstate opposed this, claiming that it prevents cervical and spinal injuries. BMW, VW, and Mercedes also favored raising the HIC criterion, even if there is dummy head contact, to a level of 1500, as proposed in a petition to NHTSA by the Committee on Common Market Automobile Constructors (CCMC).

Peugeot said that they believe HIC is not a good criterion to protect against neck injury and that further research needs to be done on the subject. This view was supported by Volvo, Renault, and Ford. Peugeot, Honda, and GM also said that there is no basis to use a different—for example, 1500—value for HIC in the absence of head contact. They believe HIC should not be measured at all in such circumstances.

Volvo said that the origin of HIC was based on forehead impacts and only for accelerations in the anterior-posterior components. Volvo said it was little wonder, as HIC is now used in FMVSS 208 for non-contact accelerations, including those in lateral directions, that HIC readings have little real-world relevance. AMC and Chrysler also claimed little relevance between HIC and the potential for real-work injury. Conversely, IIHS submitted data, based on calculation of HIC and associated real-world injuries to baseball players who were struck in the head, that there is real-world relevance of HIC and that

serious injuries, even death, occur at HIC values of 1,000. The CFAS also said that higher HICs would compromise occupant protection.

Ford, although agreeing that non-contact head accelerations can produce injury, claimed that there was no correlation between the likelihood of such brain injuries and HIC values, nor was there any relation between neck injuries and HIC.

In commenting on HIC in general, Peugeot and Renault asked that HIC values based on dummy head to knee contacts also be eliminated from measurement because the dummy's knee is much harder than the human knee, leading to higher values of HIC than would be expected in actual crashes.

Testing of Safety Belts

Commenting on the NPRM, Chrylser, VW, and Ford said that there was no need to dynamically test automatic safety belts, and that the static test requirements of FMVSS 209 and FMVSS 210, as currently related to manual belts, be applied instead. It was argued that current manual belts, which are not tested dynamically, have been proven effective as evidenced by worldwide data. Thus, the companies argue, there is no reason to test automatic belts any differently than manual belts. Dynamic testing of belts only adds to development time and costs without resulting in a higher level of safety. Recognizing the problem of assuring prevention of submarining for two point automatic belts, VW suggested that a compliance test be added for knee bolsters. Ford also suggested that the anchorage location requirements of FMVSS 210 be waived for automatic belts.

Allstate said that the fact that manual belts are not dynamically tested results in the consumer having no assurance that the restraint system in a particular vehicle will perform as it is supposed to and, thus, is the "safety scandal of the century."

No new comments were offered on this subject in responding to the SNPRM except from Jack Martens, who said that replacing the dynamic test requirement of FMVSS 208 for automatic belts with the static tests of standards 209 and 210 could result in lower quality levels for restraints. Instead, he agreed with Allstate that manual belts be dynamically tested for compliance.

Impact Test Speed

In responding to the SNPRM, GM proposed an additional set of test criteria for NHTSA to consider. GM said that if some form of passive requirements should be restained, then in addition to the current test procedures in FMVSS 208 for automatic restraints, an additional alternative of complying with manual belts, at two test speeds, should be provided. GM's proposal would permit compliance with manual belts if all FMVSS 208 criteria were met at 30 mph, with the manual belts buckled around the test dummies, *and* all criteria were also met at 25 mph, with the dummies unrestrained (i.e., belts unbuckled). GM believes this proposal would allow both consumers and manufacturers to choose between active and passive restraints while improving overall motor vehicle safety. GM also asked that the Hybrid III, or equivalent dummy in terms of biofidelity, be permitted as the test instrument.

GM claims safety benefits for their proposal equivalent to 36 percent belt usage. Their estimate is based on the reduction of total harm (which is a surrogate for the weighing of various severities of injuries by their dollar consequences) of 12 percent, which is derived by calculating the percent reduction of harm which occurs at 25 mph assuming that all current injuries were reduced in severity by one AIS level. Since GM believes that no more than a 5 percent increase in belt usage would occur with passive belts, and since the 85 percent of individuals who currently do not use their safety belts would benefit by their proposal, total safety benefits could be nearly 17 times higher. GM further states that although they only calculated benefits for reductions in harm due to frontal crashes, benefits could also be extended to other crash modes.

GM envisions that its proposal would result in greater manufacturer flexibility in offering improved occupant safety than does the current FMVSS 208 criteria and would subsequently result in the development of a variety of occupant safety technologies, such as "safer" steering columns, interior padding, door latches to prevent ejection, windshield glazing, etc. GM stated in its NPRM response that reimposition of FMVSS 208 without changes so as to permit such "built-in" safety to be developed could result in the reduction of the firm's efforts in this area due to diversion of engineering resources.

IV. Analysis of the Data

Usage of Occupant Protection Systems

General

Restraint systems will only have safety value if they are used by occupants or are in a state of readiness such that they provide protection from harm when required to do so. The following paragraphs describe these characteristics of the various restraint systems.

Manual Belts

Various changes have been required over the last 15 years to seatbelt designs to improve manual belt usage (replacing separate lap and shoulder belts and buckles with an integrated lap and shoulder belt having a single buckle and adding an intertial reel to give occupants freedom of movement) and to remind occupants to use their belts (adding brief audible and visible reminders). Nevertheless, the rate of manual belt usage has not changed substantially over the 15-year history of FMVSS 208 (except during the brief period around 1973 when interlocks and continuous buzzers were used).

Based on recent NHTSA data, the overall safety belt usage rate for front seat occupants is 12.5 percent. This information also showed that usage varies significantly by seating position—14 percent for drivers, 8.4 percent for passengers in the right front seat, and 5 percent for passengers in the center seat.

Departmental studies have noted other interesting statistics about usage of manual belts:

- People involved in more severe accidents use their restraint systems less often than the general driving public. (One theory is that belt wearers are more cautious and less prone to severe accidents.)
- Import car occupants have substantially higher seatbelt usage than domestic car occupants. (For example: usage in domestic subcompacts was 12.3 percent, while in import subcompacts usage was 22.1 percent in 1982–82.)
- Seatbelt usage increases as car size decreases. (In 1981–82, usage was 16.8 percent in subcompacts, 10.5 percent in compacts, 7.4 percent in intermediates and 5.4 percent in full-size cars.)
- Usage is higher in newer cars than in older cars. (In 1981–82, the usage in MY 81–83 cars was 16.0 percent; the usage in MY 79–80 cars was 13.6 percent.)

Automatic Belts

Usage rates for automatic belts vary substantially depending on the particular type of belt design and on the method of measuring usage. (Around 500,000 American fleet automobiles have been equipped with automatic belts; they include some 1975–1984 VW Rabbits and 1978–1980 GM Chevettes, and the 1981–1984 Toyota Cressidas.)

Studies of usage rates of existing automatic restraints are not necessarily applicable to systems that would be used to comply with an automatic restraint requirement. For example, nearly 80 percent of the existing systems (in VW Rabbits) are voluntarily equipped with starter interlocks (which DOT is prohibited by law from requiring), some owners purchased the systems voluntarily, disconnection and storage of the belts on some systems was very easy, some were installed only on rental vehicles (drivers may be atypical and, also, may not try to take long-term action to defeat the system), and some involved the more expensive motorized (with easier ingress and egress) systems. Based on the record of this and previous rulemakings, manufacturers are unlikely to equip automatic restraint vehicles with either interlocks or motorized systems. The most likely system, given that manufacturers have freedom of choice, may be the detachable automatic belt. Since this is the system for which little field experience exists, application of the current usage data to a future fleet of all automatic belt equipped vehicles may not be appropriate.

Current usage estimates for the VW Rabbit range from about 50 percent based on accident data to 80 percent based on traffic observations to 90 percent from telephone surveys. Chevette usage, based on an extremely small number of observations, is about 70 percent (a similar value is derived from telephone surveys), while Cressida belt usage appears to exceed 90 percent (observations and telephone surveys.)

The Department's estimate of future usage is based on an analysis of existing systems and surveys of usage and attitudes. Essentially, the Department tried to determine whether certain features of automatic belts might overcome some of the reasons people do not use manual belts, while recognizing the wide range of belt systems likely to be produced under a mandate. Our current estimate for automatic belt use covers a broad range: 20–70 percent. We expect usage rates for automatic belts to be higher than current manual belt usage because of the automatic nature of the belt, which would overcome some of the stated reasons for not buckling up: laziness, forgetfulness, and not wanting to be bothered. Although precise estimates are impossible, it seems reasonable that some increment of increased usage should be imputed to nondetachable belts, since some effort would be required to deactivate them.

There is no way to know precisely where within the range the automatic seatbelt usage rate would actually fall. The actual rate will depend on many considerations, such as comfort and convenience (including ease of entry and exit) and appearance. Education programs and proven on-the-road effectiveness could also affect usage.

Airbags

Impact protection benefits for airbags do not depend on usage since the occupant does not have to do anything. (However, as discussed elsewhere in this preamble, for greater protection, a lap belt should also be used.) As to whether airbags will deploy when they should, the Department believes that airbag technology is reliable and that airbags would function properly (they will not activate inadvertently and they will activate when they should) in virtually all instances. The automobile manufacturers agree. Two manufacturers stated their goal for reliability of airbags to be at least 99.99 percent.

Although usage is not a factor with airbags, "readiness" is. In the Department's Final Regulatory Impact Analysis (FRIA), based on an analysis of the number of automobiles involved in accidents, the Department determined that, if all automobiles were equipped with airbags and none of the airbags were repaired after an accident, 1.2 percent of the fleet would be without airbags at all times. This figure would be slightly higher if there were inadvertent deployments and they were not repaired. The Department has no reliable methodology for determining what percent of these airbags would, in fact, not be repaired. Because it would be very difficult to dismantle or remove an airbag—much more difficult than a belt system—and because it is not obtrusive, the Department estimates that only a small percent of car owners—perhaps one percent—would defeat the airbag. If, as a result of these two problems, two percent of all automobiles were without airbags at any one time, airbags would still be ready to deploy in 98 percent of the fleet. Thus, for analysis purposes, the Department estimates that airbag readiness would be 98 percent.

As explained in the next section, a lap belt or a lap/shoulder belt should be worn with an airbag to obtain maximum protection in side and roll over accidents, as well as in frontal crashes. Because of this, questions arise over the usage rate of the belt system supplied with an airbag. (The Department does not know whether manufacturers would supply lap/shoulder belts or just lap belts.) One argument is that belt use would decline because people would believe that airbags give ample protection. On the other side, it is contended that usage will increase if just lap belts are provided because the shoulder belt portion makes the belt uncomfortable to some people and lap belt usage in the past was near 20 percent. Education may help overcome the "decrease" argument, but habit (people are unlikely to change their habits) may also overcome the "increase" argument. As a result, in its benefit calculations, the Department has assumed that current belt usage will continue with respect to the belts accompanying airbags. (12.5 percent)

Other Automatic Occupant Protection Technologies

As with airbags, passive interiors do not have a "usage" rate applicable to them. However, unlike airbags, there are no deployment, replacement, or inactivation problems associated with them. Thus, the readiness factor of other known technologies is assumed to be 100 percent. As with airbags, lap belts or lap/shoulder belts might be required for protection in other crash modes (i.e., side, rear, rollover).

Effectiveness of Occupant Protection Systems

General

The safety benefits to be derived from any occupant restraint system are a function of both the usage (or readiness) of the system and its effectiveness, when used, to reduce injuries or deaths. Effectiveness of an occupant restraint system is expressed as a percentage reduction in injuries or deaths when compared to the situation when an occupant is unrestrained. If, in 100 crashes, a system would prevent the death of 60 percent of the occupants who would have been killed if they were unrestrained, then it would be rated as 60 percent effective in reducing fatalities. It is important to note two points in this regard: (1) Some crashes are so severe that no occupant protection system could prevent death or injury; (2) when a device prevents a fatality or serious injury that otherwise would have occurred, the individual may suffer a less serious injury instead. (As a result, a device that is more effective at reducing serious injuries, may appear less effective, statistically, at reducing minor injuries.)

The Department's estimates for the effectiveness of the various occupant restraint systems are presented in Table 4.

TABLE 4.—SUMMARY OF EFFECTIVENESS ESTIMATES

[All accident directions]

Injury	Manual lap belts	Manual lap and shoulder belts	Automatic belts	Airbags alone	Airbags and lap belts	Airbags and lap/shoulder belts
Fatal	30–40	40–50	35–50	20–40	40–50	45–55
Moderate to critical	25–35	45–55	40–55	25–45	45–55	50–60
Minor	10	10	10	10	10	10

Finally, it should be noted that, in general, the Department has less confidence in the effectiveness estimates for minor injuries than for more severe injuries due to reporting problems; many people do not report minor injuries or do not know they are injured until the next day and thus the injuries may not appear on police reports (the main source of injury data). While the relative effectiveness of the various systems should be unaffected, there is some doubt about whether the overall level of effectiveness for minor injuries is accurate.

Manual Belts

The effectiveness of manual belts is based on a comprehensive analysis of accident data, involving thousands of accidents. The estimates take into account various factors, such as the fact that occupants who wear their belts are generally involved in less severe accidents than unrestrained occupants. If factors such as this were not "controlled," the raw data would over-estimate effectiveness. Although "controlling" the data helps, it cannot pinpoint an exact effectiveness estimate. For that reason, ranges were used. Nevertheless, the Department has the greatest confidence in the estimates of manual belt effectiveness.

Automatic Belts

To determine the effectiveness of automatic belts, the Department reviewed a number of different data sources: analyses of accidents involving existing automatic belt systems, crash tests, and a study by the Canadian Government, referred to below. Since most of the available accident data involve a 2-point automatic belt with a knee bolster, the Department's conclusions on the effectiveness of all types of automatic belts lack a statistically reliable base. In addition, in our analysis of accident data involving VW rabbits with automatic belts, the Department was unable to determine with certainty the usage rates of the automatic belts. Because of the lack of firm usage data, effectiveness could not be estimated with as much confidence as was done for manual belts.

Furthermore, recent research by the Canadian Government has indicated that the absence of a lap belt may result in the 2-point automatic belt being less effective in preventing ejection. In addition, the door mounted, 2-pointed belt may have little capability of preventing ejection of an occupant in the event of an accidental door opening during a collision. However, even a 3-point automatic belt will not prevent all fatalities involving ejection, since some fatalities occur as a result of impacting interior components before ejection, while others occur as a result of occupant contact with objects outside the vehicle after partial ejection. Moreover, the door mounted belt in the 2-point system may actually prevent door openings in many instances, since the "loading" of the belt (which is attached to the door) can tend to keep the door closed during a crash.

Three-point automatic belts should be as effective as manual belts, and the Department's estimates for effectiveness of automatic belts reflect this. Automatic belt effectiveness estimates have been adjusted downward by 5 percent at the lower end of the range because there is some evidence that 2-point belts may be less effective than 3-point belts.

Airbags

Because of limited field experience with airbags, estimating the effectiveness of these devices is very difficult. There are so few cars equipped with airbags and so few cases of serious or fatal injuries that the field experience has no statistical meaning. Based on field experience through December 31, 1983, (excluding prototype and test fleet vehicles) and a front seat fatality count of 10, the computed airbag and manual belt effectiveness (as used in the equivalent cars) for fatalities is now the same. This means that airbags would not save any more lives than the belt systems as used in those cars. But because the data base is so small, we cannot place any confidence in this effectiveness figure. Based on a normal "confidence interval" (statistical certainty) of 90 percent, all that can be stated based on the field data is that airbags could range from being 46 percent more effective than the manual belts as used in the same cars to 70 percent less effective. Small changes in the number of fatalities would have drastic changes in these effectiveness estimates. Also, the comparisons are to manual belt usage in equivalent 1972–1976 cars. Belt usage in these cars was high compared to usage in later models, because they had, first, continuous light and buzzer reminders and, then, interlock systems. The airbag and equivalent manual belt cars also were very large and had low fatality rates. Finally, the accidents—small in number—were frequently atypical and involved a greater than normal number of circumstances where a restraint system could not provide protection (such as a drowning). All of these factors indicate that the "true" effectiveness could be significantly higher than in this small fleet.

Current estimates of airbag effectiveness are based principally upon four new analyses which have recently been conducted by NHTSA. The three studies concerned with fatality effectiveness all use the National Crash Severity Study (NCSS), a major accident data collection program designed to result in a nationally representative sample. Effectiveness was estimated by partitioning the NCSS accidents into various sub-groups by distinguishing characteristics and then making judgments about whether an airbag could prevent the fatalities that occurred in that sub-group. A fourth study estimated moderate to critical injury effectiveness by comparing injury rates sustained in the airbag fleet cars to a comparable non-airbag group in the NCSS file.

We have relied on these new studies primarily because they are based on a relatively large, representative set of unrestrained fatal accident cases. These data, as well as the now available eight-year census of fatal accidents, were unavailable to NHTSA when the automatic occupant protection requirements were first promulgated in 1977. Thus, effectiveness estimates which are not derived from field experience now have a large file of accident data upon which to be based. Further, NHTSA assembled a task force comprised of experts in the field of restraint design, crash testing and accident data analyses to ensure that the resulting estimates represented a consensus of varying judgments and expertise.

However, it must be noted that even these new analyses have a significant degree of uncertainty associated with them. For the most part, they rely on

judgments about airbag performance based on limited field experience and controlled crash testing. This technique has obvious limitations, because death and injury in highway accidents are very unpredictable.

There is little disagreement that airbags will function very well in non-catastrophic, frontal or near frontal collisions up to speeds approaching 45 mph and will offer little or no protection in rear end collisions. The real issue concerns airbag effectiveness in side or angle impacts, rollover, and catastrophic frontal crashes. Because the Department is undecided on airbag effectiveness in the latter three situations, a wide range of estimated effectiveness for airbags has been provided. The lower portion of the range (20–25 percent) is generally consistent with the assumption that airbags will have fairly low effectiveness in side and rollover crashes. With progressively more optimistic assumptions regarding their performance in these types of crashes, the overall effectiveness estimate approaches the higher end of the range (40 percent). The 20–40 percent range fully encompasses the above dichotomy of assumptions. The zero percent field experience figure is discounted because of its statistical unreliability, crash test data showing superior performance of airbags at higher speeds than for manual belts, and statements to the docket.

Other Occupant Protection Technologies

Effectiveness estimates for other technologies are currently unavailable.

Conclusions

Some conclusions can be drawn from the general effectiveness data that have been developed. First, the most effective system is an airbag plus a lap and shoulder belt. To obtain maximum protection in not only frontal, but also side and roll over accidents, occupants of cars with airbags and lap belts must use a lap belt to supplement the airbag. An airbag plus a lap belt provides an equivalent level of effectiveness to a manual lap and shoulder belt system. Finally, an airbag alone is less effective than a manual lap and shoulder belt or automatic belt, when those systems are used.

Benefits of Occupant Restraint Systems

Safety Benefits

With its estimates for usage and effectiveness, the Department can determine benefits by multiplying the product of those two estimates by the fatality or injury figure. The final result is the number of fatalities or injuries prevented. Table 5 shows the incremental benefits; i.e., the benefits over and above those accruing from current levels of restraint usage. The numbers provided in Table 5 are annual benefits assuming full implementation. They are based on *all* cars on the road having the restraint system noted (which would not be the case until at least ten years after full implementation). Mixes of restraint systems, for example, half of the cars with airbags and half with restraint systems, for example, half of the cars with airbags and half with automatic belts, would lead to results between the values shown for those systems. The numbers also reflect the mid points, as well as the extremes, of the effectiveness ranges provided in Table 4. For these calculations, belt usage with airbags was assumed to be current levels of restraint usage. The Department has also provided data on the benefits of airbags even if belts were not used. A range of benefits is provided for automatic belts and mandatory belt use laws, because of uncertainty over usage rates.

TABLE 5.—ANNUAL INCREMENTAL REDUCTION IN FATALITIES AND INJURIES

	Fatalities			Moderate-Critical Injuries		
	Low	Mid-point	High	Low	Mid-point	High
Airbags only	3,780	6,190	8,630	73,660	110,360	147,560
Airbags with lap belts (12.5 percent usage)	4,410	6,670	8,960	83,480	117,780	152,550
Airbag with lap/shoulder belts (12.5 percent usage)	4,570	6,830	9,110	85,930	120,250	155,030
Automatic Belts						
Usage:						
20 percent	520	750	980	8,740	12,180	15,650
70 percent	5,030	6,270	7,510	86,860	105,590	124,570
Mandatory Belt Use Laws (Manual Belts)						
Usage:						
40 percent	2,830	3,220	3,590	47,740	53,440	59,220
70 percent	5,920	6,720	7,510	100,430	112,410	124,570

Another aspect of the analysis of benefits is the difference in short-term benefits of the different alternatives. Roughly one-tenth of the American fleet of automobiles is replaced every year. Although some automobiles are kept beyond 10 years, the Department generally assumes that, ten years after a rule requiring a safety device on new automobiles has been implemented, that device would be in place in virtually the entire American fleet. In this regard, mandatory seatbelt use laws that are enforced can have a distinct advantage in that they can be applied to all automobiles in the existing fleet immediately rather than only new cars. Since the precise date at which different states would pass and implement a mandatory belt use law can not be judged, it is difficult to predict with certainty when benefits would accrue and what the level of those benefits would be.

However, comparisons can be made based upon reasonable assumptions. For example, if all states pass a mandatory belt use law and usage throughout the nation increased to 70 percent or more within three years, the short-term benefits (over the next 10 years) would be 2.5 times higher for such laws than those associated with airbags or with automatic belts at the 70 percent usage level. As the amount of time necessary to pass the laws increases, or the number of states passing such legislation decreases, or if usage does not increase to 70 percent, the short-run (and long-run) benefits of mandatory belt usage would decrease compared to the benefits of airbags (and possibly automatic belts if they are used at high levels). Nevertheless, the benefits of mandatory belt use compared to the introduction of automatic restraints are substantial.

Table 6 compares benefits for the first ten and fifteen years after the introduction of automatic restraints into the fleet with those associated with mandatory belt use laws. Three use law scenarios are examined. If all states quickly pass a mandatory belt use law and usage increased to 70 percent or more, short them benefits (over the next 10 years) would be about 2.5 times higher than benefits with airbags or automatic belts with 70 percent usage. Thus, unless all cars had airbags, or automatic belt usage approached 70 percent, the long-run (15 years) benefits of automatic restraints would be unlikely to approach those associated with rapid passage of state belt use laws. The short-run safety benefits of such laws are always likely to be higher.

TABLE 6.—TIME PHASE ANALYSIS OF FATALITY BENEFITS

Year	Air bag with automatic belt		Mandatory belt use law: 40 to 70 percent usage		
	12.5 percent usage of lap belt	20 to 70 percent usage	Scenario 1	Scenario 2	Scenario 3
1	400	50-350	3,220-6,720	2,160-4,560	880-1,080
2	1,090	110-940	3,220-6,720	2,160-4,560	720-2,160
3	1,590	180-1,500	3,220-6,720	2,160-4,560	720-2,540
4	2,180	250-2,050	3,220-6,720	2,160-4,560	840-2,000
5	2,730	310-2,570	3,220-6,720	2,160-4,560	880-3,400
6	3,230	360-3,030	3,220-6,720	2,160-4,560	920-3,770
7	3,690	410-3,470	3,220-6,720	2,160-4,560	970-4,160
8	4,130	460-3,880	3,220-6,720	2,160-4,560	1,010-4,450
9	4,560	510-4,280	3,220-6,720	2,160-4,560	1,050-4,770
10	4,980	560-4,680	3,220-6,720	2,160-4,560	1,090-5,070
Total (1 to 10)	28,470	3,200-26,760	32,220-67,200	21,600-45,600	8,600-34,600
11	5,340	600-5,010	3,220-6,720	2,160-4,560	1,130-5,350
12	5,660	640-5,320	3,220-6,720	2,160-4,560	1,160-5,600
13	5,900	660-5,550	3,220-6,720	2,160-4,560	1,170-5,760
14	6,030	680-5,270	3,220-6,720	2,160-4,560	1,180-5,950
15	6,240	700-5,860	3,220-6,720	2,160-4,560	1,200-6,000
Total (1 to 15)	57,700	6,480-54,220	48,300-100,800	32,400-67,500	14,800-63,500

Scenario 1—It is assumed that all states have mandatory belt use laws which are in effect at the time that an automatic occupant protection standard becomes effective for new cars.

Scenario 2—It is assumed that 67 percent of the population is subject to mandatory belt use laws which are in effect at the time that an automatic occupant protection standard becomes effective for new cars.

Scenario 3—It is assumed that 20 percent of the population is subject to mandatory belt use laws which are in effect at the time that an automatic occupant protection standard becomes effective for new cars. The remaining 80 percent of the population would have cars equipped with automatic belts, with usage in the 20-70 percent range.

Conversely, if a large number of states do not pass a law, or it takes a long time to get the state laws passed, or usage does not increase to 70 percent, then the short-run and long-run benefits of mandatory belt usage and automatic restraints may be equal.

Insurance Savings

The potential reduction in fatalities and injuries that would result from mandating automatic restraints could produce a corresponding decrease in funeral, medical, and rehabilitation expenses. A reduction in these expenses could, in turn, result in reductions in premiums for any insurance that covers them. (Automobile insurance premiums could also increase to cover added expenses due to accidents or thefts involving airbag equipped automobiles. This is discussed later in the preamble.) The Department cannot be certain that consumers would receive any premium reductions or, if they would, what their magnitude might be. Most insurance industry representatives are reluctant to provide quantitative estimates of potential savings to consumers. However, at least one company provided an independent estimate and one state official assured the Department that he will mandate such reductions in his state.

The Department, based on the potential safety benefits discussed previously and an estimate of the portion of premiums associated with front seat occupant fatalities, estimates that the discounted value of automobile insurance savings (assuming a 10 percent discount rate and a 10 year vehicle life) could be, based on the mid-points of the effectiveness ranges, $95 for cars equipped with airbags. Spread over the entire vehicle fleet (including uninsured vehicles), the discounted value is $89. For belt systems the savings would depend upon usage rates but could be as high as $85 per insured car and $79 when spread over all cars, if usage rose to 70 percent; at 20 percent usage, the figures would be $10 and $9, respectively.

The Department's analysis also showed that between $49 million and $1,100 million could be saved annually in health, life, and worker's compensation insurance and governmental payments for social services such as Medicare, Medicaid, disability insurance, etc. The discounted value of these insurance and governmental payment savings expressed on a per vehicle basis would be in the range of $2 to $61.

Table 7 summarizes the insurance savings that could result from a requirement for automatic occupant restraints. These potential insurance savings do not account for some offsetting insurance premium increases for airbag equipped cars, which are discussed later.

TABLE 7.—SUMMARY OF POTENTIAL SAVINGS ON INSURANCE PREMIUMS FROM AUTOMATIC RESTRAINT REQUIREMENTS

	Per vehicle annual savings (dollars)	Per vehicle lifetime savings (dollars)	Total annual savings (M) 1990 fleet equivalent
Air bags:			
Automobile insurance	9-17	62-115	1103-2045
Health insurance	4-8	23-54	521-932
Life insurance	0-1	3-7	62-136
Total	13-26	94-176	1691-3144
Automatic belts (For 20 percent assumed usage):			
Automobile insurance	1-2	5-14	83-243
Health insurance	0-1	2-7	42-114
Life insurance	0	0-1	7-14
Total	1-3	7-22	133-371
Automatic belts (For 70 percent assumed usage):			
Automobile insurance	10-14	65-94	1145-1678
Health insurance	5-7	31-44	533-783
Life insurance	1	4-6	71-106
Total	16-22	100-144	1759-2570

Public Acceptance of Occupant Protection Systems

The public acceptance of safety devices likely to be installed in compliance with Federal motor vehicle safety standards is one of the factors which must be considered by the Department in establishing those standards. In *Pacific Legal Foundation v. DOT*, the court found that in order for a safety standard to be practicable and meet the need for safety, the safety devices to be installed pursuant to the standard must be acceptable to the public. The Department has attempted to determine the likely public attitudes toward manual and automatic restraints and mandatory safety belt usage laws based on public opinion surveys. In analyzing these surveys, the Department recognizes that the usefulness of the surveys as predictors of future public attitudes is limited by several factors. One is the public's lack of experience with automatic restraints on which to base its opinions. In view of the increase in favorable attitudes toward automatic belts by owners of automatic belt cars

between the time of initial ownership and a later time, the Department believes that gradual exposure of the public to automatic restraints will increase the acceptability of those restraint systems above the levels indicated in the surveys. Equally important, most of the surveys are more than several years old. Since public opinion appears subject to change in relatively short periods of time in this area, as is evidenced by the fairly rapid enactment of child restraint usage laws in most states, there is additional reason to believe that these surveys may not accurately reflect future public attitudes and perhaps not even current public opinion.

Awareness/knowledge of automatic restraints. The extent of the survey respondents' knowledge about automatic restraints is important in assessing the validity of the surveys as predictors of public reaction to automatic restraints. The less knowledgeable the respondents are, the less weight can be given to the survey results. Several surveys made in the late 1970's and early 1980's show that considerably higher percentages of the people surveyed were aware of airbags than automatic belts. The figures for airbags were 62 to 93 percent of the respondents, while those for automatic belts were much smaller.

Government's role in making automatic restraints available. There were a variety of deficiencies in the surveys which included questions about public attitudes toward a government requirement for airbags or automatic restraints. For example, most surveys did not attempt to ascertain the degree of the respondents' knowledge of airbags and did not inform respondents about the cost of automatic restraints. Eight of the 12 surveys which attempted to ascertain public attitudes found that respondents favored a Federal requirement. Based on its analysis of those surveys, the Department concluded that while many people do not favor such a requirement on all new cars, there is also a substantial number who state their willingness to purchase cars with automatic restraints. Thus, initial public reaction will be divided. Public education and the performance of automatic restraints will be the key factors in determining the long run public acceptance of automatic restraints.

How much would the public pay for airbags? The surveys on the willingness of the public to purchase airbags indicate that only a small percentage appears willing to pay more than $400 or would expect to pay less than $100 for any airbag system. The majority of respondents cluster around the $200–$300 levels, covering a range of approximately $150–$350. Toward the upper end of this cost range, the driving public is roughly evenly divided in its willingness to buy airbags. This suggests that a substantial potential market for airbags exists and that a significant portion of the public would opt for them if they were priced within the $150–$350 range and available in sufficient quantities.

Attitudes toward manual belts, automatic belts and airbags. The surveys generally indicate that the public views automatic belts as superior to manual belts in comfort and convenience and that these characteristics would apparently override some of the reasons respondents give for not using manual belts. Those reasons include not wanting to be bothered with belt usage and being lazy and forgetful. At the same time, some of the reasons for not using manual belts appear equally applicable to automatic belts, e.g., fear of entrapment, doubting the value of safety belts, and not wanting to be restrained.

Airbags were rated highest on comfort, convenience and appearance and were perceived to be safer than other restraint systems by infrequent belt users. Primary concerns expressed about airbags relate to reliability, whether they will work when needed or deploy accidentally, and cost.

Public attitudes toward a mandatory safety belt usage law. Surveys made in the 1970's indicate that the public is divided on the issue of mandatory belt usage laws when the concept of sanctions is not mentioned; two 1983 surveys found the public to favor mandatory use laws. When the possibility of sanctions was mentioned as part of several surveys taken in the 1970's there was increased opposition to mandatory use laws. Since the newest of these surveys involving sanctions is six years old, the Department does not have a current reading of nationwide public opinion.

Public opinion surveys—docket submissions. Two public opinion surveys on occupant restraint issues were submitted to the docket, one by GM and the other by IIHS. Since both surveys included questions whose wording appears to have affected the answers, the Department does not believe that the answers to those questions can be regarded as accurately reflecting current public attitudes. For example, some questions failed to mention either the benefits or the costs of automatic restraints. In addition, there are reasons for questioning the representativeness of the sample of respondents.

As to whether there should be airbags in new cars, the GM survey found that 51 percent of the respondents favored installation if the price were $100. That number dropped to 35 percent if the price were $320 and to 19 percent if the price were $500. The GM survey also asked whether the respondents would favor installation of automatic belts at a additional cost of $100. Thirty-eight percent answered affirmatively.

IIHS' survey asked whether airbags and automatic belts should be standard or optional equipment. Fifty-six percent favored installation as standard equipment and 40 percent as optional equipment. When the 44 percent who did not believe that automatic restraints should be standard equipment were asked if manufacturers should be required to offer those restraints as options, 84 percent answered affirmatively.

Of the two surveys, only the IIHS survey directly queried the respondents about their preference for automatic restraints at various price levels. At a cost of $100 over the cost of manual belts, 30 percent favored automatic belts over manual belts and at a cost of $150, 25 percent did so. Similarly, at a cost of $100 for airbags 55 percent favored airbags over manual belts. The percentage fell to 47 percent at $200 and 42 percent at $350.

Both surveys asked about preferences for airbag requirements versus a safety belt usage law. The GM survey found that 28 percent would most like to see the combination of a belt usage law and a 65 mph speed limit on the Interstate System, 24 percent preferred airbags in all cars, and 16 percent favored a belt usage law by itself. To measure dislikes, the GM survey asked which requirement the respondents would least like to see enforced. Airbags were picked by 44 percent, a belt usage law by 14 percent, and the combination of a belt usage law and a 65 mph speed limit by 11 percent. The IIHS survey showed a preference of 2 to 1 in favor of an airbag requirement over a belt usage law. The results of both surveys in these areas were at least in part due to the particular information provided the respondents and to the wording of the questions.

The Department does not believe that it is necessary to resolve the dispute between the commenters over the precise role of public acceptability in establishing safety requirements. The nature and significance of public acceptability issues varies greatly

depending on the particular factual circumstances of individual rulemakings. Since *Pacific Legal Foundation* v. *DOT*, it has been beyond dispute that public acceptability must be considered in rulemaking under the Act. The Department agrees that public acceptability involves more than considering consumer preferences. As Allstate noted, if preferences alone were a controlling factor, then that would call into question the current provisions under which manual belts are installed in new cars. However, the Department also agrees that behavior other than disabling occupant restraint systems may be relevant in considering public acceptability. The Department believes that its consideration of public acceptability would satisfy whatever definition might be applied in assessing its actions.

Based on the likelihood that the car manufacturers will install detachable automatic belts or airbags instead of nondetachable automatic belts, the Department does not believe that there will be a significant reduction in benefits due to persons disabling automatic restraints. Neither the detachable automatic belt nor the airbag have the intrusive or coercive qualities that the combination of manual belts and ignition interlocks had in 1974. However, the Department recognizes the need for the public to become accustomed to the technology and the need for protection, and believes that an across-the-board mandate too quickly could engender adverse public reaction. The Department's decision to gradually phase in the requirements of this rule will help build public acceptance of this rule. Additionally, although the added costs of automatic restraints will theoretically have some effect on new car sales, those effects, as discussed in the FRIA, would not be substantial.

Costs and Lead-Time for Occupant Protection Systems

Equipment

General. Table 8 provides the Department's estimates for the incremental increase in equipment and fuel costs and required lead-time for automatic belts and airbags. The increment is the cost over that of the current manual lap/shoulder belts. The Department estimates that installation of airbags in compact and larger cars would require 3 to 4 years lead-time and automatic belts in all cars would require 2 to 3 years; installation could begin sooner for a small fraction of annual production, and is likely to take even longer for airbags in small cars. Greater detail on the estimates is provided in the Department's Final Regulatory Impact Analysis.

TABLE 8.—PER VEHICLE COST IMPACTS

	Incremental cost	Lifetime energy costs	Total cost increase	Required leadtime (months)
Manual belt system	Base			
Automatic belt system (2 pt or 3 pt nonpower high volume)	$40	$11	$51	24-36
Air bag—driver only (high volume)	$220	$12	$232	[1] 36
Air bag—full front (high volume)	$320	$44	$364	[1] 36-43

[1] For compact-sized and larger cars.

The costs of manual and automatic belts and airbags are based on tear down studies and comments to the docket. The cost for belts are believed to be typical of high volume production costs; the estimates for airbags are based on production of 1 million units, which is believed to be representative of full production system costs if airbags were widely used.

Table 9 presents industry estimates on costs and lead-time. It shows investment costs separately because of its effect on cash flow. Investment costs are not, however, additive to equipment; they are already included in equipment costs.

TABLE 9.—INDUSTRY STATEMENTS* INCREMENTAL ON COSTS OF OCCUPANT RESTRAINT SYSTEMS AND LEAD TIME (1983 DOLLARS)

	Equipment cost to consumer per vehicle (dollars)			Investment cost** (millions of dollars)		Fuel cost (pounds)		Lead time (months)	
	Automatic belts	Airbags		Automatic belts	Airbags	Automatic belts	Airbags	Automatic belts	Airbags
		Driver	Full front						
GM	45	[2] 510	[2] 633	125	[6] 573	0	56	36	36
Ford	-	-	[3] 807	-	-	25	40	36-43	43
Chrysler	115	[1] 500	[1] 800	37	[6] 80	-	-	36	36-60
AMC	-	-	-	-	-	-	-	30-36	36-42
Mercedes	-	[5] 880	-	-	-	-	-	-	-
Renault	200	-	[7] 1,000	1.5	-	-	-	24	36
Jaguar	150	600	[7] 1,600	-	31	-	35	-	-
VW	-	-	-	-	-	7	-	43	-
SAAB	-	-	-	-	-	-	-	30	53
Nissan	130-150	-	-	-	-	-	-	30-42	-
Honda	150-170	-	-	5	-	-	-	36-43	-
Mazda	-	-	-	-	-	-	-	36	36
Peugeot	380	-	-	-	-	-	-	36	36
Am. Seat Belt Coun	-	-	-	-	-	-	-	24	-
AOPA	-	-	[4] 185	-	-	-	-	18-30	18-30
Breed	-	[4] 45	[4] 141	-	-	-	-	18	-
Lohr	45	-	-	Little	-	-	-	-	-
Romeo Kohn	-	[6] 150	-	-	-	-	-	-	-

[1] At 1 million units.
[2] At 3 million units.
[3] At 200,000 units.
[4] At 2 million units.
[5] Includes pre-tensioned passenger belt plus driver lap/shoulder belt.
[6] Retrofit does not include installation.
[7] Estimate.
[8] For driver only airbags, GM said that investment costs would be $423 million and Chrysler said $12 million.
*A "-" indicates no data was submitted or the commenter claimed it was confidential.
**Already included in equipment costs. Also shown separately because of effect on cash flow.

Manual Lap and Shoulder Belts. Based on Departmental analyses, the increase in a new car's price attributable to the addition of a manual lap and shoulder belt to the front outboard seating positions and a manual lap belt to the front center position is approximately $64, based on a production volume of one million units per year. The added weight for the manual belt would increase fuel usage at a cost of $22 over the life of the car.

Industry estimates for the cost of existing manual seatbelts ranged from $50 (Honda and Peugeot for 2 seating positions) to $90 (Nissan for 2 positions). GM and Chrysler said seatbelts for 3 positions cost $65 (GM said $59 for 2 positions).

Automatic Belts. For the various designs of automatic belts having a fixed anchorage on the door, the increase in a new car purchase price over that for a car with manual seatbelts has been estimated at $40. Added fuel costs over the life of the car would be $11. Some manufacturers may offer motorized belt systems, such as Toyota currently offers in its Cressida. Incremental cost increases for such systems are estimated by manufacturers to be as high as $300 to $400, but the

NHTSA teardown study of the Cressida system shows incremental consumer cost increases of only $115 for such systems. Although motorized systems may lead to higher usage levels because of their convenience, they were not required under FMVSS 208 prior to its rescission in 1981, and are not required by this amendment to the rule.

Of the major automakers, only GM provided a detailed cost estimate in its comments to the rulemaking docket. GM's estimate was for a high volume, four-door sedan with two front seats and 3-point detachable automatic belts with single door-mounted retractors. No provision was necessary for knee bolsters. Their estimate, as well as that of an experienced cost estimator (Lohr) was $45, similar to our estimate of $40. The NHTSA tear-down studies of the Rabbit and Chevette systems, including modifications to fit other cars, yielded costs of $11 to $34. Other manufacturers' estimates are higher than NHTSA's because of "extras" (i.e., equipment not required under FMVSS 208; providing manual lap belts with 2-point automatic belts, knee bolsters with 3-point belts or extra retractors to "hide" detached automatic belts) and different assumptions about markups (profit and overhead) over actual variable costs.

The NHTSA teardown studies were adjusted to account for a mix of 2- and 3-point belts as well as for provision of items *not* required by the standard, but which could increase usage or safety. Two items that fit in the latter categories are motorized systems and the provision of manual lap belts with 2-point automatic belts. These additions increase the tear-down study estimates to $40.

The NHTSA estimate of incremental weight associated with automatic belts is 5 pounds. This compares with GM's estimate of no increase in weight with such systems, VW's estimate of 7 pounds and Ford's 25 pound estimate. Assuming an equal increment of secondary weight, NHTSA estimates that the total 10 pound weight increase would result in $11 extra in fuel consumption over the vehicle's lifetime.

Airbags. The Department estimates that the vehicle price increase resulting from the installation of airbags in all three front seating positions of cars would be $320 over the cost of a car with manual lap and shoulder seatbelts, based on a production volume of one million units. The replacement cost for a deployed airbag is estimated to be $800. There would also be a fuel penalty of $44 over the life of the car, above that for a car with manual lap and shoulder belts. The cost for a driver-only airbag and lap belt is estimated to be $220, plus a $12 fuel penalty.

The price of airbags is sensitive to volume changes. At annual volumes of less than 300,000 units, full front airbags may cost anywhere from $400 to $1,500 per car. For volumes of 10,000 units per year or less, the latter figure is most representative. A successful, all mechanical airbag system (such as the Breed system) may reduce the unit price of a full front airbag system to about $250 at an annual volume of one million units.

NHTSA's airbag tear-down study involved in 1979 Ford and a 1981 Mercedes Benz driver and passenger airbag system. The systems were disassembled into their component parts and, using automotive engineering cost estimating techniques, a NHTSA contractor estimated a variable or "piece" cost of each component exclusive of any fixed overhead expenses incurred in the production of airbag systems. These estimates are similar to those supplied by the actual airbag manufacturers through their association. The estimates that were developed include our best estimate of the cost of required vehicle modifications. The estimates also include certain component modifications suggested by the contractors for high volume production. Estimates were developed for annual production volumes of 300,000, 1,000,000 and 2½ million for both systems. In arriving at a unit retail price, unit variable costs were marked up by a factor of 1.33 to arrive at "wholesale" or "dealer" cost and a dealer discount of 12 percent was assumed.

The difference between the Department's estimates and industry's estimates is basically due to differences in design and pricing assumptions. For example, one major cost difference involves the price of the diagnostic module and associated electronics. In its comments to the docket, Ford indicated that it believes that military specification grade electronics are necessary in view of product liability considerations; we have assumed that automotive grade electronics will suffice although we recognize that initially, manufacturers may resort to military specification grade electronics until the reliability of automotive grade electronics is proven sufficiently. Significant differences also exist in the number of required crash sensors, module costs (NHTSA used supplier quoted costs) and vehicle markups. The Department also found the estimates provided by the major U.S. major manufacturers for driver-only airbag costs difficult to justify at their stated volumes. For example, even recognizing that there are vast differences in basic design between Mercedes and GM vehicles, Mercedes appears to be charging its customers a price 25 percent higher than GM's estimate for a driver-only system even though the Mercedes system is optional and sold on an annual volume which is 42 times lower than that estimated by GM.

Other Occupant Protection Technologies. Costs for other technologies are currently unavailable.

Investment

Investment costs, which are defined as outlays for property, plant, machinery, equipment, and special tools to be used in the production of automatic occupant restraint systems, are estimated to be $1.3 billion if airbags were required in all new cars and $500 million if automatic belts were required. These estimates are for the multi-year period prior to full implementation of an automatic restraint requirement. Industry's estimate for these expenses are contained in Table 9.

The implementation of automatic occupant restraint requirements should not substantially alter the magnitude of planned capital spending over the next several years, since domestic manufacturers alone are investing nearly $10 billion annually.

Insurance

If airbags were required in all automobiles, collision and property damage liability insurance policies would have to absorb additional costs for replacing deployed airbags, for the value airbags add to vehicles that are "totaled", and for the added cost that would result when some damaged vehicles are considered "totaled" instead of repairable because of the added cost of replacing the airbag. The Department estimates that the maximum expected loss, because of a requirement for airbags in the entire automobile fleet, that would be borne by collision insurance policies would be approximately $177 million per year. For property damage liability policies, the cost would be $118.2 million.

Comprehensive insurance policies will also have to absorb additional costs for the value that airbags add to vehicles that are stolen or damaged by such things as fire and flood. The cost to insurance companies for these vehicles would be increased by the average depreciated value of airbags in the vehicles. The Department estimates that the maximum loss that would be

covered by this insurance would be approximately $55 million per year.

These additional losses from airbags may cause annual premium increases, per insured vehicle, of about $2.60 per vehicle per year or $16.60 over a vehicle's lifetime. Table 10 shows these costs.

TABLE 10.—SUMMARY OF POTENTIAL AUTOMOBILE PHYSICAL DAMAGE PREMIUM COSTS RESULTING FROM AIRBAGS (1982 DOLLARS)

	Per insured vehicle annual cost	Per insured vehicle lifetime cost	Per vehicle annual cost	Per vehicle lifetime cost	Total annual costs (millions)
Collision	1.90	13.45	1.31	6.25	177.2
Property damage liability	.94	6.35	.69	5.95	118.1
Comprehensive	.54	3.65	.41	2.77	55.4
Total[1]			2.60	17.57	350.7

[1] No total is provided for per insurance vehicle figures because each type of insurance covers a different number of vehicles. The addition of these numbers would therefore be meaningless.

Economic Impact

In response to the comments about the potential economic impact of any rulemaking, the Department's analysis indicates that, with a labor force of over 115 million projected for the mid-1980's, it would be difficult to conclude that a restraint system costing the consumer no more than $500 would result in any measurable impact on national employment. Any perceptible effect on GNP is unlikely. Finally, as to the consumer price index, the Bureau of Labor Statistics generally considers higher consumer costs due to safety equipment as quality improvements, not inflationary increases, having no effect on the consumer price index. The projection of effects on the GNP and the price index have one thing in common: the relative changes are small. Long-term effects on auto sales are expected to be minor and auto industry revenue and employment would be expected to *increase*. In any event, any significant changes would result only from an all airbag requirement, not from the installation of automatic belts.

There are also positive economic benefits associated with automatic occupant protection. Based on the previously mentioned estimates of lives saved and injuries avoided (see Table 5), and the economic losses associated with those casualties as contained in a recent NHTSA study, "The Economic Cost to Society of Motor Vehicle Accidents" (January 1983), as much as $2.4 billion in annual economic losses could be avoided by requiring automatic protection. Although we do not wish to—and cannot—place a value on human life or injury, there are some costs associated with those deaths and injuries that can be measured, and only these are included in the study. Because they do not include such things as pain and suffering or loss of consortium, they will obviously understate total benefits of the life saving and injury reducing potential of occupancy restraint systems.

V. Analysis of the Alternatives

General

Introduction

Numerous alternatives have been considered as part of the response to the Supreme Court decision on automatic occupant restraints. Before analyzing each of the specific alternatives, this portion of the paper first looks at some of the general pros and cons of each automatic protection system. It also discusses the pros and cons of other general features of many of the alternatives: a demonstration program, mandatory state seatbelt use laws, legislation to require that the consumer be given the option of buying an automatic restraint system, airbag retrofit capability, passive interiors, and the center seat issue.

Airbags

Airbags offer a distinct advantage over other occupant restraints in that they ensure a usage rate of nearly 100 percent for both drivers and passengers. Used alone, they do offer protection, but, to equal the effectiveness of a manual lap and shoulder belt, airbags must be used with lap belts. Lap belts in airbag equipped cars would probably be used only at a level near the current level of seatbelt use, 12.5 percent. Because manual belts use is so low, however, airbags would provide much greater safety benefits.

Airbags with lap belts also provide protection at higher speeds than safety belts do, and they will provide better protection against several kinds of extremely debilitating injuries (e.g., brain and facial injuries) than safety belts. They also generally spread the impact of a crash better than seatbelts, which are more likely to cause internal injuries or broken bones in the areas of the body where they restrain occupants in severe crashes. However, the airbag does not provide protection at less than ten-twelve miles per hour, nor does it provide protection in rollover or rear-end crashes. Its level of effectiveness in side crashes is uncertain, hence the large range of effectivenes estimates for airbags. To attain protection in these non-frontal crashes, a lap belt, or lap/shoulder belt must be worn.

Full front airbags also can provide protection for the center seating position. No other automatic restraint system can do this, because, as with manual seatbelt systems, a shoulder belt cannot practicably be offered for the center seat.

The use of airbags would overcome possible public objections to the obtrusiveness of continuous automatic belts, lessen concerns about entrapment and avoid problems of shoulder belt comfort and convenience. Although there are significant public concerns about the alleged hazards associated with airbags, the Department believes that many of these (e.g., inadvertent activation, sodium azide, and lack of assurance that they work when needed) are unfounded.

The public might also be very concerned about the cost associated with airbags—especially current belt users who may argue that they would be getting very little additional protection at much greater cost. The cost of airbags is one of their biggest disadvantages.

One problem with respect to costs is the wide disparity between the Department's cost estimates and industry's. Although the Department can explain its estimate and the reasons for the differences, it cannot control the price at which the system is offered to the consumer. Thus, although the Department believes full front airbags need cost no more than $320, they could, especially in the near term, cost much more, since airbag costs are very sensitive to production volume. Any alternative that does not result in the use of a large number (for example, 300,000) of airbags may result in their per unit costs being very high.

Repair shop owners have raised concerns about their potential liability if an automobile's airbag fails to work after repair work was done on the car. the Department believes this concern is over stated; the introduction of an airbag into an automobile is no different from the introduction of other safety features that may not work after repair work is done on an automobile.

Moreover, the insurance companies have indicated in their testimony and docket comments that there would be very little if any increase in premiums to provide insurance protection against such risks. Indeed, some insurance companies testified that product liability claims should decrease with automatic restraints. The expected reduction in deaths and injuries should result in fewer claims, for example, alleging that the brakes or steering were defective. Although some consumers might view airbags as a panacea and bring suit if subsequently injured, such "nuisance" suits are unlikely to be successful and, thus, should be short-lived.

Concerns were also raised about the dangers of sodium azide, the gas generant in most airbag systems. The sodium azide pellets are hermetically sealed and the potential of exposing motorists to a harmful dose is remote. Additional concerns involved the dangers posed by persons tampering with unfired sodium azide canisters and by the scrapping of cars with unfired canisters. While the Department believes that disposal problems can be resolved, further action on this issue is required, and the Department will work with automobile manufacturers and scrappers to ensure the safe retirement of airbag equipped vehicles. Although it is possible that individuals may tamper with or try to steal an unfired sodium azide canister, the Department believes that this is highly unlikely. The amount of sodium azide contained in the canister is small and it is more readily available through other sources. Other items in the automobile—antifreeze, gasoline, battery acid, or flares—are either more poisonous or explosive.

Dealers are also concerned that car sales will decline with an all airbag fleet. They fear that potential buyers may stay out of the market, hoping to buy in later model years when an all airbag decision would have been overturned by subsequent agency or congressional action. However, as discussed in the FRIA, the price increases associated with an all airbag new car fleet, would, at most, result in one to three postponed sales per dealership. In the long term, lost sales would not, on average, be expected to exceed one per dealer. Since airbags are not being required by this amendment to FMVSS 208, a consumer need not purchase an airbag-equipped vehicle unless he or she so desires. Thus, there should not be any reduction in sales resulting from the fact that airbags are one of several systems made available to consumers.

Another concern involves the technical problem of out-of-position occupants in small cars. The out-of-position occupant problem primarily affects children less than three years old. (The size of the child and the speed with which the bag must open in small cars are the primary reasons for the problem.) Overall, the safety benefits are greater for an out-of-position occupant with an airbag than without one. Moreover, technical modifications (e.g., sensors that could detect an out-of-position occupant and adjust the opening of the airbag to account for the occupant's position) and child restraint laws should lessen the problem. Nevertheless, the Department can not state for certain that airbags will never cause injury or death to a child. This situation is similar to current safety belts where the benefits are well-known, but they do on occasion cause injuries that otherwise would not have occurred. Again, the Department is not mandating the use of airbags.

In addition, manufacturers have commented that space limitations in small cars would inhibit the installation of current airbag systems and adversely affect their effectiveness. While this problem can be resolved, more time would be needed. At least four years lead time would be needed if airbags were required in small cars.

Still another issue is raised by some manufacturers who contend that tests required under the rule are not sufficiently repeatable to enable manufacturers to assure themselves of compliance. They argue that they get too wide a variation in results when they test the same automobile under the test procedure. To protect against some cars not passing the test, they say they will have to design the restraint systems to a more stringent standard than should be necessary. Although difficulties in the testing procedures are still of concern to the manufacturers, we believe that the testing device and testing procedure have matured greatly in the last decade. Furthermore, based on the result of NHTSA's NCAP tests, most cars (albeit with manual belts) already meet the injury prevention criteria of FMVSS 208, at 35 mph—a 36 percent more severe crash than required by the standard (which is a 30 mph test). Compliance by airbags is even less of a problem since the injury levels of the test dummy tend to be well below the maxima of the standard (much lower than for belt systems), providing a large margin of safety. In summary, we do not think that test repeatability is such a severe problem as to preclude an airbag or other occupant restraint standard, although the Department will subsequently address possible improvements in this area.

Some people are concerned that the failure to issue a rule that will result in at least some airbags being placed in automobiles might mean the end of the development of airbag technology. In this regard, it must be remembered that some improvements—such as those made by the Breed Corporation—have come about without regulation. Moreover, four manufacturers are currently planning to offer driver-only airbags in their automobiles, even though not required. It is, therefore, possible that others may follow suit to meet the competition. Most important, the Department believes that this rule will result in the use of airbags in a far larger number of automobiles than is the case today.

It should be noted that improvements are possible in the airbag system that might overcome some of the remaining problems. For example, the airbag system being developed by Breed might make airbags available at less cost than current airbag systems.

Some may argue that consumer fears and dislike of airbags may come close to generating a level of public disapproval equivalent to the seatbelt interlock system. On the other hand, the unobtrusiveness of the system may result in the airbag generating the least disapproval.

Nondetachable Automatic Seatbelts

The usage rate for nondetachable automatic belts should be higher than that for manual belts, but some people will certainly find them uncomfortable, cumbersome, and obtrusive. Others will fear entrapment. Although they are much less costly than airbags and not much more expensive than manual seatbelts, these concerns with nondetachable belts might hamper automobile sales.

Finally, it is possible that, in an emergency, people may find nondetachable belts harder to get out of than detachable belts. Although data do not exist on this issue, the Department has long expressed concern about the possibility that an unfamiliar egress mechanism could impede emergency exit. In the early 1970's, DOT issued a rule requiring all automatic belts to be detachable to permit emergency exit. Even in a later amendment in 1978 allowing the "spool-release" feature on continuous belts, NHTSA continued to express some concerns about ease of exit in case of emergency. The Department believes, however, that

current designs of continuous belts will not create a safety problem.

Perhaps the most serious concern with respect to nondetachable belts is that the public's dislike of them may lead to defeat of the system (e.g., by cutting the belt). A number of surveys have found that 10–20 percent of the public might do so. This would result in not only the original owner but subsequent owners and passengers being deprived of any occupant restraint system. Since the average car has two to three owners during the useful life, belt availability could decrease to nearly 50 percent for a 10-year old car.

Nondetachable belts are probably the most coercive type of automatic restraint. Combining this with the fears of entrapment and the concerns over obtrusiveness could cause enough public clamor to result in the same type of problem that arose out of the interlock requirement in the mid 1970s when Congress forbade the Department from requiring that device. (In the NHTSA authorization bill of 1980, which barely failed enactment, there was a provision to ban nondetachable seatbelts.)

Nondetachable belts would also force manufacturers to eliminate the center front seat (by the use of bucket seats and consoles). There is no commercially developed technology to provide an automatic belt for the center seat; even if it were exempted from the requirement for an automatic restraint, occupants would have a difficult time getting by the nondetachable belts to reach the center seat.

Another problem with nondetachable belts is that they make it difficult to install a child restraint seat properly.

Detachable Automatic Seatbelts

Detachable belts should alleviate some consumer concern about automatic belts and government involvement in the consumer's decision about belt usage. Although it is easy not to use the automatic feature (be detaching the belt and leaving it stowed), the availability of the automatic feature would make it easier to overcome some of the problems of manual seatbelt usage.

Detachable belts would also be only slightly more expensive than manual belts, but the additional expenditure would be made for what are likely to be relatively small safety benefits, if usage does not increase substantially over that for manual belts. In this regard, however, it must be remembered that NHTSA rescinded the automatic restraint requirement in 1981 because it found that detachable automatic belts would be installed in most cars and thought that those belts might not increase belt usage enough to justify them. The Supreme Court, in reviewing this action, then found that the evidence in the record indicated a possible doubling of usage with automatic belts. The Court also said that the inertia factor provided grounds for believing that seatbelt use by the 20–50 percent who wear their belts occasionally would increase substantially. The manufacturers also now agree that detachable belts will increase usage, at least initially.

Demonstration Program

Although we may gain more data on usage and effectiveness, the main purpose of a demonstration program would be to obtain detailed data on the issue of public acceptability of automatic occupant restraints. To the extent consumer purchases under a demonstration program would be voluntary, data that were gathered on usage or effectiveness would be too small to determine the reaction of the general population under an automatic occupant restraint mandate. To obtain statistically reliable data within a reasonably short period of time, a large number of automobiles would have to be included in the program. If such a program were to be conducted, the Department believes that it should include provision for producing at least 500,000 cars per year over a four year period with airbags, detachable and nondetachable automatic belts. The three types of automatic restraints would be divided evenly among the cars produced. This should provide statistically reliable results in four to five years from the date the first car is sold. (If the program is limited to airbags, 250,000 cars should be manufactured per year over a four year period. This would provide results in about 4 to 5 years.) The program could be conducted in essentially the same fashion as envisioned by Secretary Coleman when he announced his plans in 1976 to conduct a demonstration program. At that time, the Department negotiated contracts with four car manufacturers for the production of up to 250,000 automatic restraint equipped cars per year for model years 1980 and 1981.

During our recent public hearings, Ford indicated support for a mandatory demonstration program. Other manufacturers are receptive to a voluntary program, but only as an alternative to an automatic restraint requirement, and only under several conditions regarding the manufacturers' freedom to choose the type of restraint and model, test procedure changes, etc. Several manufacturers would not voluntarily participate in any demonstration program.

Three methods could be considered for conducting a demonstration program: (1) A voluntary contract program such as that suggested by Secretary Coleman; (2) use existing National Traffic and Motor Vehicle Safety Act authority to mandate such a program; and (3) seek Federal legislation. A mandated demonstration program would be difficult to justify under the Safety Act. Ford believes that such authority exists, but the Department thinks that new legislation would be necessary. It is unclear whether Congress would provide the necessary legislation or any funding that might be required. Moreover, the time necessary to obtain any legislation would have to be added to the time necessary to conduct an effective program. There also may be serious objection to a demonstration program after so many years of attempted rulemaking, and especially so many years after Secretary Coleman's efforts.

Mandatory State Safety Belt Usage Laws

A number of analyses of seatbelt use in countries that have mandatory use laws show that such laws do increase usage. Survey results, based on responses from officials in foreign countries, show that when seatbelt usage was required and the requirement was properly enforced, usage increased dramatically and remained high. Tables 11 and 12 clearly illustrate these dramatic increases. Table 11 provides data available to the Department on 17 nations that have passed MULs; the table shows the difference in usage rates before and after the enactment of MULs. In addition, a number of Canadian provinces have enacted MULs. Those provinces and the data on their experience are contained in Table 12. (More detail on the information in these tables can be found in the FRIA.)

TABLE 11.—CHANGES IN SEAT BELT USAGE RATES UNDER MANDATORY USE LAWS

Country	Effective date of law	Belt usage	
		Before	After
Australia	January 1972	30 percent	78–87 percent.
New Zealand	June 1972	40 percent	83 percent.
France	July 1973	20–25 percent	85 percent highways.

TABLE 11.—CHANGES IN SEAT BELT USAGE RATES UNDER MANDATORY USE LAWS—Continued

Country	Effective date of law	Belt usage	
		Before	After
			75 percent country roads.
			50 percent night in cities.
			35 percent day and night in built up areas.
Puerto Rico	January 1974	5 percent	14 percent.
Sweden	January 1975	22 percent	75 percent.
Belgium	June 1975	17 percent	87 percent.
Netherlands	do	11 percent urban	58 percent urban.
		24 percent rural	75 percent rural.
Finland	July 1975	30 percent highways on weekdays	68 percent highways on weekdays.
		9 percent urban traffic	53 percent urban traffic.
Israel	do	6 percent	70 percent.
Norway	September 1975	13 percent urban	77 percent urban.
		35 percent rural	88 percent highways.
Denmark	January 1976	25 percent	70 percent.
Switzerland	January 1976 (repealed October 1977).	19 percent city streets	75 percent city streets.
	Reenacted November 1980	35 percent highways	81 percent highways.
		42 percent expressways	88 percent expressways.
West Germany	January 1976	55 percent autobahns	77 percent autobahns.
		32 percent country roads	64 percent country roads.
		20 percent city streets	47 percent city streets.
		33 percent weighted average	58 percent weighted average.
Austria	July 1976	10 percent urban	20 percent urban.
		25 percent rural	30 percent rural.
South Africa	December 1977	10 percent	62 percent.
Ireland	February 1979	20 percent	45 percent.
Great Britain	January 1983	40 percent	95 percent.

TABLE 12.—CHANGES IN DRIVER SEAT BELT USAGE IN CANADA UNDER MANDATORY USE LAWS

Province	Effect date of law	Use before (percent)	Use in 1983 (percent)
Ontario	1-76	23	60
Quebec	8-76	18	61
Saskatchewan	1-77	32	54
British Columbia	10-77	37	67
Newfoundland	7-82	9	76
New Brunswick	6-83	4	68
Manitoba	1-84	12	12
Averages weighted by traffic counts at data collection sites:			
Provinces with mandatory use laws			61
Provinces with no mandatory use laws			15
Unweighted average usage before laws passed (Excl. Manitoba)		21	

The data in these two tables clearly illustrate the significant effect MULs have on seatbelt usage. As Table 11 shows, usage rates ranged from 5 to 40 percent before MULs went into effect, and from 14 to 95 percent after enactment. Usage typically at least doubled and in some cases increased three times or more. The average usage for the 17 countries in the table was 23 percent before mandatory belt usage and 66 percent after, an increase of 43 percentage points.

The Peat, Marwick, Mitchell and Company (PMM) study from which most of the data included in Table 11 were obtained concluded that the main factors that influence the frequency with which individuals wear their seatbelts under MULs are: (1) The level of enforcement applied by the police; (2) the natural propensity of individuals to be law abiding; and/or (3) the individual's personal perspective regarding their own safety.

Given the geographical proximity of Canada to the U.S. and the many similarities between our societies, the Canadian experience with MULs is especially valuable. MULs are in effect in seven provinces in Canada, but, since Manitoba's did not go into effect until January 1984, data are not yet available from that province. Usage rates before MULs went into effect for the six other provinces averaged 21 percent. Usage rates for those six averaged 61 percent in 1983. This is an increase of 40 percent under MULs. The PMM and other studies of MULs, which are more fully discussed in the FRIA, have concluded that success is dependent on how well the public is prepared for these laws, the severity of sanctions, and on the diligence of enforcement. For this reason, the Department has established criteria in the amended rule to ensure an appropriate level of educational, sanction and enforcement efforts.

The 1982 background paper on "Mandatory Passive Restraint Systems in Automobiles," prepared by the Congressional Office of Technology Assessment, stated that "Mandatory belt use laws are potentially the most effective approach to ensuring passenger restraint. Experience in other industrialized countries suggests that a mandatory law might result in usage rates exceeding those achievable with passive belts because so many passive belts would be detached. Nevertheless, in today's political climate in the United States, mandatory seatbelt-use laws seem unrealistic." The Department agrees with the potential for belt use laws, but feels that the political climate and public attitudes have changed significantly since then, making the possibility of enactment of such laws considerably higher.

Currently, one state legislature, New York's, has passed a mandatory use law which provides for a $50 fine, allows waivers for medical reasons only, and requires the Governor to conduct a public education program in conjunction with the law. Eleven other states are reported as actively considering seatbelt usage laws.

A number of statewide and nationwide surveys have been taken in the United States to determine the public acceptability of mandatory state belt use laws. Surveys taken in 1979 or earlier generally indicate that the public is strongly divided on mandatory seatbelt use laws. However, public attitudes about automobile safety have changed markedly over the past few years, in part because of the grass roots uprising in opposition to drunk driving. The public now strongly supports laws and innovative enforcement action to reduce the needless deaths and injuries caused by drinking and driving. This movement has spilled over into other highway safety areas such as safety belt and child safety seat usage. Evidence of this attitudinal change can be seen in the fact that 46 states and the District of Columbia have enacted child safety seat laws since the beginning of 1981 (bringing the total to 48), the New York State Legislature's recent enactment of the adult MUL law, and the significant progress made toward the enactment of MULs in other states—notably Illinois, Minnesota, and Michigan. Recent surveys taken by several states found 66 percent in favor of mandatory belt usage laws in Michigan, 69 percent in Delaware, 52 percent in New York, and 56 percent in Ohio.

Many of the commenters who support such legislation stress the need to have public education programs before the actual enactment of the laws and Federal incentive grants as an effective impetus to stimulate the states. Indeed, the success of the mandatory law in Great Britain can be attributed to an intensive public information and education program conducted during the two preceding years before enactment of the law.

Legislation To Require Consumer Option

This option would ensure that consumers were given the widest possible choice of both whether to purchase an automatic occupant restraint and, depending on the

requirement, what type of automatic restraint. Unlike the current market situation, those who wish to purchase an automatic occupant restraint system could do so. This would probably not be as effective in generating safety benefits as a requirement for automatic restraints in all cars. Those drivers who are involved in more serious accidents are probably the ones least likely to purchase such systems. Depending on how "controlling" the legislation that was adopted was, numerous other problems could develop. For example, dealers might not stock vehicles with automatic restraints, requiring consumers to wait a long time so as to "force" many people to purchase manual safety belts. In addition, the small number of automatic restraints produced under this alternative would likely mean high prices per unit due to a lack of economy of scale. There also would be significant costs imposed on manufacturers because of extra design and tooling costs, if it were necessary to provide more than one type of automatic restraint for each model. As a result, the overall costs for manufacturers and consumers might far outweigh the benefits, and if an insufficient volume of different types of restraints were produced, there might not even be enough data to permit further evaluation of the different types of systems.

Airbag Retrofit Capability

Requiring an airbag retrofit capability would make it easier for owners of automobiles to have airbags installed in their cars in the "aftermarket." It would also allow purchase of an airbag by a second or third owner, if the original owner failed to purchase one. This would be especially valuable if systems like Breed's airbag eventually proved successful. However, it could be argued that only the more safety conscious consumers are likely to purchase such airbags; the high risk drivers might not take advantage of the option. In addition, all automobiles would become more expensive, even if the airbags were installed in relatively few cars, and the cost of airbags could be very high if they are purchased in low volumes that do not permit economies of scale. Moreover, this alternative would not ensure that airbags would be available to consumers who wish to have them installed.

Passive Interiors

GM has been doing research to develop "passive interiors"—to build in safety by improving such things as the steering columns and padding. It believes this would be better than automatic occupant restraints and contends that it cannot afford to do both. Although an attractive alternative, this approach is still being developed, and even GM is not willing to say that it will meet FMVSS 208 in the immediate future. Moreover, FMVSS 208 does not require airbags or automatic belts; GM's passive interior concept is an acceptable compliance method, which should be encouraged. It holds the promise of being a low cost, nonobtrusive method of complying with the standard.

GM also asked that the Department consider dropping the barrier standard from 30 mph to 25 mph for passive interiors. The Department has virtually no data on what diminution in safety would occur if the lower standard were to be used. Thus, it has no basis for making such a change.

Nevertheless, the Department encourages further research in this area. From the limited test data available, it is generally evident that it is within the state-of-the-art to pass FMVSS 208 criteria at 25 mph (using unrestrained Hybrid III dummies). General Motors, in their docket submission, indicated that the Oldsmobile Omega and the Pontiac Fiero have passed the injury prevention criteria of FMVSS 208 at 30 mph. Nissan engineers indicated in 1974 that the 260Z would come close to meeting the FMVSS 208 criteria at 25 mph. In a NHTSA test of a Ford Crown Victoria, the driver dummy's performance met the FMVSS 208 injury criteria in a 30 mph barrier test. However, even though these vehicles met the FMVSS 208 criteria, none of the manufacturers have expressed confidence in their ability to so certify to the government. Nonetheless, the Department remains optimistic about further development of this technology.

Center Seating Position

Intertwined with most of the alternatives is the issue of what to do about the center seating position. Automatic seatbelts (and even 3-point manual belts) cannot be used for the center seat. As a result, the only automatic protection available for front center seat occupants is an airbag or passive interiors. If automatic seatbelts were used to comply with a requirement for automatic occupant restraints, the center seat would have to be eliminated as an occupant position, unless it were exempted from coverage. Moreover, even if it were exempted from coverage, if nondetachable belts were required, occupants would have a difficult time getting to the center seat. Finally, even if airbags were used to meet a requirement for automatic restraints, at least one commenter (Ford) indicated that the center seat position might be eliminated due to the problem of out-of-position occupants.

If the center seat were exempted from coverage and detachable belts (or airbags) were used to provide automatic protection for the outboard seats, the center seat could still be used because the automatic belts are detachable. If they are detached to let a passenger sit on the center seat, the question then arises as to how often they would be reattached. In this regard, a recent study by Market Opinion Research is noteworthy. It indicated that the interaction between the driver and the passengers was a significant factor affecting belt usage; i.e., if the driver wore a belt, this made it more likely that a passenger would. Since passengers normally enter the front seat from the passenger side of the automobile, the driver's automatic belt would not have to be disconnected for them to enter. Therefore, if the driver does not disconnect his belt, the fact that the passenger side automatic belt is disconnected to permit entrance to the center seat may not have a serious adverse effect; since the driver is wearing his belt, it may encourage reconnection of the right front belt and/or the use of the center seat lap belt. Conceivably, center seat lap belt usage could increase compared to the expected usage in cars with only manual belts.

If the center seat were not exempted, the loss of the center seat would affect both manufacturers and consumers. In arguing for exempting the center seat, Consumer's Union and the American Automobile Association pointed out that consumers would lose vehicle utility due to a reduction in the maximum seating capacity. Manufacturers could be affected if customers opt to purchase smaller cars if they lose the center seat in larger cars. This could cause a loss of profits, since larger cars yield more profit per unit than smaller ones.

The indirect safety effects are quite complex. Moving a child, for example, from the center seat to a back seat has the advantage of significantly improving the child's safety, but the disadvantage of possibly leading to a driver who may frequently turn around to check a child in the back seat. There are also fuel economy and safety implications, if two cars are necessary when one would have otherwise been sufficient for a particular trip. The issue is made even more complex by the fact that some center seat passengers may move to the right seat and others may move to the back seat, if the right seat is already occupied. The front right seat is statistically the least safe position in the

automobile, but sitting in the back is slightly safer for adults than sitting in the front.

On the other side, only one-third of the cars sold in 1982 were six seat cars, and that number has been declining as cars are being downsized. (Recent trends, however, indicate some increasing consumer preference for larger cars.) An estimated 1.5 percent of front seat fatalities and injuries involve the front center seat occupant. Automatic restraints for the front center seating position would not yield as many benefits as when FMVSS 208 was originally imposed in 1977 and would not provide the same benefits per dollar spent as providing protection for the two outboard seats.

Although the center seat is rarely used, about one-third of its present occupants are children. For that reason, many are concerned about the equity of not providing automatic protection to this position. However, with child restraint laws becoming effective in 48 states and the District of Columbia, this argument loses a great deal of its merit.

Rationale for Adoption of the Rule

The Requirement for Automatic Occupant Restraints

The final rule requires, in accordance with the phase-in schedule, that automatic occupant protection be provided in passenger cars. The requirement can be complied with through any of the occupant protection technologies discussed earlier in the preamble, if those systems meet the testing requirements of the rule; i.e., manufacturers may comply with the rule by using automatic detachable or nondetachable belts, airbags, passive interiors, or other systems that will provide the necessary level of protection.

The requirement also only applies to the outboard seating positions of passenger cars. The center seat in those cars that have one is exempt from the requirement for automatic occupant protection. In addition, the requirement does not apply to other than passenger cars; for example, trucks, tractors, or multi-purpose vehicles such as jeeps are not covered by the rule.

The National Traffic and Motor Vehicle Safety Act of 1966, as amended, directs the Department of Transportation to reduce fatalities and injuries resulting from traffic accidents. In its decision in the *State Farm* case, the Supreme Court held that, in carrying out its responsibilities under the Safety Act, the Department "must either consider the matter further or adhere to or amend Standard 208 along the lines which its analysis supports" 103 S. Ct. at 2862. In a number of instances throughout its opinion, the Court indicated where it found NHTSA's 1981 rescission to be inadequately supported or explained. The Department has now completed its further review of this matter, giving special consideration to the Supreme Court's decision.

Based on this review, the Department has determined that the data presented in this preamble and more fully analyzed in the Department's Final Regulatory Impact Analysis support the following conclusions:

- After assessing the data now available to it, the Department has revised its 1981 analysis concerning the likelihood of increased usage if automatic detachable belts are installed to meet FMVSS 208; it cannot project either widespread usage, or a widespread refusal to use such systems by automobile occupants.
- While it is clear that airbags will perform as expected in virtually all cases, it is also clear that the effectiveness of the airbag system is substantially diminished if the occupant does not use a belt. Consumer acceptability is difficult to predict, with the major variables being cost, fear, and the unobtrusiveness of airbags.
- Nondetachable automatic belts may result in sharply increased usage, but there may also be substantial consumer resistance to them.
- The installation of automatic occupant protection in passenger cars may significantly reduce both fatalities and injuries.
- The costs of the existing automatic restraint systems are reasonable, and the potential benefits in lives saved, injuries reduced in severity and costs avoided are substantial.
- Technologically, the systems are feasible and practicable.

Even if we assume the lower level of the range for the effectiveness of automatic belts (35 percent) and very little increase in usage (an increase of only 7½ percent over the current 12½ percent usage rate for manual belts places us at the 20 percent level used in Table 5), there still would be significant incremental annual reductions in deaths and injuries as a result of an automatic occupant restraint rule complied with entirely by the installation of belts; 520 fatalities and 8,740 moderate to critical injuries would be prevented. Using the higher effectiveness figure (50 percent) and still only 20 percent usage, we would come close to doubling the benefits; 980 fatalities and 15,650 moderate to critical injuries would be prevented annually. If usage increases to 70 percent, 5,030–7,510 deaths and 86,860–124,570 injuries would be prevented annually.

With respect to airbags, even assuming low effectiveness and no use of lap belts, the record supports the conclusion they would provide significant incremental reductions in deaths and injuries. Airbags without a lap belt could save 3,780–8,630 lives and prevent 73,660–147,560 injuries each year. With lap belts used at the current manual belt usage rate (12.5 percent), the evidence in the record indicates that airbags could save 4,410–8,960 lives and prevent 83,480–152,550 injuries.

The potential reduction in fatalities and injuries that would result from automatic restraints could produce a corresponding decrease in funeral, medical, and rehabilitation expenses. A reduction in these expenses could, in turn, result in reductions in premiums for any insurance that covers them and a reduction in the burden on taxpayers of various medical, rehabilitation and welfare costs.

As discussed earlier, collision and property damage liability and comprehensive insurance policies will have to absorb some additional costs to the extent that airbags are used.

In attempting to provide any relationship between costs and benefits of occupant protection systems, three important points must be kept in mind:

(1) The statute directs us to "reduce * * * deaths and injuries," and, in doing so, to consider whether the standard we issue "is reasonable, practicable and appropriate." The Supreme Court noted in the *State Farm* case that it is "correct to look at the costs as well as the benefits of Standard 208," 103 S. Ct. at 2873, but we should also "bear in mind that Congress intended safety to be the preeminent factor under the Motor Vehicle Safety Act." *Id.* (The Senate Report said safety was "the paramount purpose". The House Report called it "the overriding consideration.")

(2) The net result of any calculations will only provide information on *measurable* benefits. They would not represent the full benefits of reducing fatalities and injuries because the Department cannot measure the intangible value of a human life or a reduced injury. It cannot adequately measure, for example, the value of pain and suffering or loss of consortium.

(3) The data developed on usage and effectiveness are not always precise and in many instances involve broad ranges. As a result, they can have an effect on figures derived from them and the various relationships that ensue.

With this in mind and recognizing that insurance premium reductions alone

only identify a portion of the economic benefits resulting from an automatic occupant protection rule, it is interesting to note some breakeven points for the cost related to automatic belts using low and high effectiveness estimates. The breakeven point occurs when lifetime cost (retail price increases and additional fuel cost) equal lifetime insurance premium reductions. At the high effectiveness level, the breakeven point occurs at the 32 percent usage level. At the low effectiveness level, the breakeven point occurs at the 44 percent usage level. Thus, by increasing current usage by approximately 20–30 percent, automatic belts will pay for themselves simply based on estimated insurance premium reductions. Inclusion of non-insurance benefits would lower these breakeven points, perhaps significantly.

Although airbag systems do not attain similar breakeven points based just on insurance premium reductions, it is interesting to note that a significant portion of airbag costs would be paid for just by insurance premium reductions. The estimated lifetime cost of a full front airbag system is $364, including increased fuel cost; the lifetime insurance premium reductions are estimated to range from $76 to $158 assuming 12.5 percent usage of the lap belt.

By issuing a performance standard rather than mandating the specific use of one device such as airbags or prohibiting the use of specific devices such as nondetachable belts, the Department believes that it will provide sufficient latitude for industry to develop the most effective systems. The ability to offer alternative devices should enable the manufacturers to overcome any concerns about public acceptability by permitting some public choice. If there is concern, for example, about the comfort or convenience of automatic belts, the manufacturers have the option of providing airbags or passive interiors. For those who remain concerned about the cost of airbags, automatic belts provide an alternative. This approach also has the advantage of not discouraging the development of other technologies. For example, the development of passive interiors can be continued and offered as an alternative to those who have objections to automatic belts or airbags.

Because one manufacturer has already begun to offer airbags and three others have indicated plans to do so, the Department expects that airbags will be offered on some cars in response to this requirement. Moreover, the continued development of lower cost airbag systems, such as the system being developed by Breed, may result in their use in even larger numbers of automobiles. By encouraging the use of such alternatives to automatic belts through this rulemaking, the Department expects that more effective and less expensive technologies will be developed. In fact, the Department believes it is in the public interest to encourage the development of technologies other than automatic belts to reduce the chance that the purchaser of an automobile will have no other option. *See* 103 S. Ct. at 2864. Thus, the rule is designed to encourage non-belt technologies during the phase-in period. The Department's expectation is that manufacturers who take advantage of this "weighting" will continue to offer such non-belt systems should the standard be fully reinstated. It also expects that improvements in automatic belt systems will be developed as more manufacturers gain actual experience with them.

Center Seat

The Department has also decided to exempt the center seat of cars from the requirement for automatic occupant protection. This has been done for a number of reasons described in more detail earlier in this preamble. First, limitations in current automatic belt technology would probably result in the elimination of the center seat for most cars if it were required to be protected. Balancing the loss of vehicle utility, and the numerous effects that this could have, with the limited number of occupants of the center seat and, thus, the limited benefits to be gained from protecting it, warrant exempting its coverage. It should be noted that different protection by seating position already exists as rear seat requirements differ from front seat requirements; the center front seat itself is already exempt from the requirement to provide shoulder belts. Thus, there is ample precedent for this action.

Mandatory Use Law Alternative

The rule requires the rescission of the automatic occupant protection requirement if two-thirds of the population of the United States are residents of states that have passed MULs meeting the requirements set forth in the regulation. The requirement would be rescinded as soon as a determination could be made that two-thirds of the population are covered by such statutes. However, if two-thirds of the population are not covered by MULs that take effect by September 1, 1989, the manufacturers will be required to install automatic protection systems in all automobiles manufactured after September 1, 1989. As discussed in an earlier section, use of the three-point seatbelt (which our analysis indicates is exceeded in its effectiveness range only by an airbag with a three-point belt) is the quickest, least expensive way by far to significantly reduce fatalities and injuries. "We start with the accepted ground that if used, seatbelts unquestionably would save many thousands of lives and would prevent tens of thousands of crippling injuries." 103 S. Ct. at 2871. As set out in detail earlier in the preamble, coverage of a large percentage of the American people by seatbelt laws that are enforced would largely negate the incremental increase in safety to be expected from an automatic protection requirement.

The rule also contains minimum criteria for each state's MUL to be included in the determination by the Secretary that imposition of an automatic protection standard is no longer required. Those minimum criteria are as follows:

(1) A requirement that each outboard front seat occupant of a passenger car, which was required by Federal regulation, when manufactured, to be equipped with front seat occupant restraints, have those devices properly fastened about their bodies at all times while the vehicle is in forward motion.

(2) A prohibition of waivers from the mandatory use of seatbelts, except for medical reasons;

(3) An enforcement program that complies with the following minimum requirements:

(a) *Penalties* A penalty of $25 (which may include court costs) or more for each violation of the MUL, with a separate penalty being imposed for each person violating the law.

(b) *Civil litigation penalties.* The violation of the MUL by any person when involved in an accident may be used in mitigating any damages sought by that person in any subsequent litigation to recover damages for injuries resulting from the accident. This requirement is satisfied if there is a rule of law in the State permitting such mitigation.

(c) *The establishment of prevention and education programs to encourage compliance with the MUL.*

(d) *The establishment of an MUL evaluation program by the state.* Each state that enacts an MUL will be required to include information on its experiences with those laws in the annual evaluation report on its Highway Safety Plan (HSP) that it submits to NHTSA and FHWA under 23 U.S.C. 402.

(4) An effective date of not later than September 1, 1989.

The data in Table 5 indicate the important safety benefits that can be derived from an effective MUL. The relative benefits of an MUL compared to an automatic occupant restraint rule are dependent on two unknowns: the percentage of cars equipped with each restraint and the usage or readiness rates for them. For example, if most cars were equipped with automatic belts and seatbelt usage increased 15 to 20 percent, some people would consider the automatic occupant restraint rule quite successful. An MUL would more than match the safety benefits of this rule, however, even if it was only half as successful as the data indicate foreign MULs have been. Unlike an automatic occupant restraint, MULs achieve these safety benefits without adding any cost to the car.

Moreover, an MUL can save more lives immediately. It covers all cars as soon as it is passed and put into effect. An automatic occupant restraint rule requires lead time before the manufacturers can begin installing the devices, and then it would take ten years before most of the American fleet was replaced with cars with the automatic restraints.

At the same time, the Department recognizes that MULs must be enacted before they can have any effect. Although a number of states are considering MULs, only one state legislature has passed one that is applicable to the general population. Many commenters have argued that the possibility that MULs may be passed is an insufficient basis for the Department of Transportation to decide not to issue an automatic occupant restraint rule; such inaction would violate the Department's obligations under the National Traffic and Motor Vehicle Safety Act.

This rule allows the Department to meet the concerns over the obstacles to enactment of MULs and still be able to take advantage of their benefits if they are enacted. To the extent that automatic protection systems encounter substantial consumer resistance, it encourages State legislatures to seriously consider what some may view as a more attractive alternative. Regardless of the ultimate course the country takes, the end result will be a significant improvement in automobile safety, which is the Department's goal.

This approach avoids many of the problems associated with the other MUL proposal set forth in the SNPRM. That alternative would have resulted in waivers being granted on an individual, state by state basis, for those states that passed MULs. The chosen approach eliminates the need to "regulate" the sale of manual belt automobiles to prevent them from being purchased by people in states without MULs. In addition, under the rule, consumers should not have to delay purchases of cars if they want to avoid automatic protection systems. Before September 1, 1989, they will have a choice, since not all cars will be manufactured with automatic protection systems. After that, either MULs will be in effect or automatic protection will be required in all cars. Under the other SNPRM MUL alternative, some consumers might have delayed the decision to buy a car while waiting for their state to pass an MUL.

Under this aspect of the regulation, the Department will review each state MUL as it is passed to determine whether it meets the minimum criteria established by the regulation. If, at any time before April 1, 1989, the Secretary determines that the total population covered by MULs that meet the minimum criteria of the regulation reaches or exceeds two-thirds of the population of the United States, the Secretary will declare the rule rescinded. If, on April 1, 1989, the Department's information indicates that two-thirds of the population are not covered by MULs, the Department will publish a notice asking for public comment on these data. If no new data are presented to the Department establishing that, prior to April 1, 1989, two-thirds of the population were covered by MULs, the automatic occupant protection requirement will remain in effect.

Some have argued that as soon as the rule is rescinded, one or more states may rescind their MULs. The Department must presume the good faith of state legislators. It also believes that the advantages of MULs will be so clear that it would be extremely difficult and unlikely that any state would rescind its statute. The Department's position on this matter is fortified by the success of MULs in foreign jurisdictions and the fact that only one of those jurisdictions has ever withdrawn an MUL, and that nation subsequently reinstated the law. Furthermore, it would be completely impractical to tie reinstatement/rescission in short cycles to the action of one or two state legislatures. The Department will, of course, continue to monitor the general issue of the protection of automobile occupants and, in accordance with its statutory responsibilities, take whatever action is deemed necessary in the future to ensure that the objectives of the National Traffic and Motor Vehicle Safety Act are met.

If the automatic occupant protection requirements are rescinded because of the passage of MULs, up to one-third of the population may have no automatic occupant protection systems in their automobiles and their states may not pass MULs. However, as discussed at length above, there are disadvantages to each of the automatic restraint systems. No approach will completely eliminate deaths and injuries. The National Traffic and Motor Vehicle Safety Act's very purpose is "reduc[ing] traffic accidents and deaths and injuries to persons resulting from traffic accidents." 15 U.S.C. 1381. Coverage of two-thirds or more of the American people by MULs will be a major achievement and is clearly consistent with the Act, and it will result in a more substantial reduction in deaths and injuries more quickly and at a lower cost than any other practical alternative. In the interim, this rule will have required the automobile manufacturers to make automatic protection systems available on an unprecedented scale.

A number of points must be kept in mind while considering the relative merits of an automatic restraint as compared to MULs:

(1) MULs immediately cover the entire fleet of automobiles within the state. We do not have to wait ten or more years for a system to become installed in the entire fleet.

(2) The Department expects that, under a simple automatic occupant restraint requirement, the primary method of compliance would have been through the use of automatic belts. Although automatic seatbelts would likely result in some increased usage, MULs, based on foreign experience, should result in higher usage rates.

(3) Although automatic belts are relatively inexpensive in terms of the significant safety benefits they achieve, MULs have no cost increment over the existing system.

(4) If only two-thirds of the population are covered by MULs and the MULs result in what the Department estimates to be the lowest possible usage rate based on our analysis of foreign experience—40 percent of the occupants—they will still result in a reduction in fatalities of from 1,900 to 2,400 and a reduction in moderate to critical injuries of 32,000 to 40,000 on an annual basis. This compares to automatic restraints, which, if installed in all automobiles, would result in a reduction in fatalities of between 520 and 980 and a reduction in moderate to critical injuries of between 8,740 and 15,650 at 20 percent usage, after they are installed in all automobiles. Moreover, during the first ten years, MULs would save a total of from 19,000 to 24,000 lives

and prevent from 320,000 to 400,000 moderate to critical injuries. During those same ten years, while they were being installed in the American fleet, automatic belts at 20 percent usage, for example, would save a total of between 2,900 and 5,400 lives and prevent between 48,000 and 86,000 moderate to critical injuries. Thus, the overall safety benefits of the rule should exceed the benefits of a simple automatic protection requirement, *even if one-third of the population are not covered.*

(5) We also expect that residents of MUL states will develop the habit of wearing seatbelts and will wear them even in non-MUL states. Residents of non-MUL states will be required to wear them while traveling in MUL states. This should increase the protection level somewhat.

In addition to the tremendous safety benefits of MULs, we also have the advantage of providing some local option in the decision-making. If enough states prefer MULs to automatic occupant protection, they can pass such laws and the requirement will be rescinded. We believe that offering this "option" should lessen any public resistance to an automatic occupant protection requirement. Having some ability to choose one alternative over the other should make both alternatives more acceptable. As noted earlier, public acceptance is an appropriate and important concern of the Department in its rulemaking under the National Traffic and Motor Vehicle Safety Act. Some commenters argued that automatic restraints should be used in conjunction with and not as an alternative to MULs. This argument ignores both the public acceptability concerns set forth above and the incentive for passage of such laws—to the extent there is significant consumer resistance to automatic protection devices—created by the Department's approach.

A number of commenters disagreed with the SNPRM proposal to establish criteria for the MULs. They argued that the criteria should be left to state governments and that establishment of criteria by the Department of Transportation might discourage a number of States from enacting MULs. Although the Department understands this concern, it believes that, under the National Traffic and Motor Vehicle Safety Act, in order for it to accept MULs as an alternative to requiring automatic crash protection, MULs must provide a level of safety equivalent to that which would be expected to be provided under existing technology by the automatic systems. The Department, therefore, believes it is imperative that it establish minimum criteria that will ensure that the MULs will achieve a usage level high enough to provide at least an equivalent level of safety. Otherwise, for example, a State could pass an MUL that permitted so many waivers or exceptions as to be meaningless.

The Department would like to note that, rather than requiring a state to amend an existing MUL, the Department will consider granting a waiver from the minimum requirements for an MUL for any state that, before August 1, 1984, has passed an MUL that substantially complies with these requirements.

In the SNPRM, the Department asked whether a rule such as the one the Department has adopted should be based on the number of states passing MULs or the population that is covered by the MULs.

The Department has decided to base the final rule on the percentage of the population rather than the number of states for the following reasons. If three-quarters of the states passed MULs, it might result in as little as 41–42 percent of the population being covered. The Department believes that the percentage of the people who are covered is the important aspect of any MUL alternative. As the Department has already clearly explained, the valuable safety benefits of MULs warrant encouraging their enactment.

It is the position of the Department that it has both the legal authority and the justification to require automatic occupant protection in all passenger automobiles. It is also the Department's position that it has the legal authority and the justification for rescinding the automatic occupant restraint requirement if two-thirds of the population are covered by MULs before September 1, 1989. It believes that either alternative would provide tremendous safety benefits; both meet all the standards of the Act and both carry out the objective and purpose of the statute.

The Phase-In

The rule requires the manufacturers to follow a phase-in schedule for compliance with the automatic occupant protection requirements. A minimum of 10 percent of all cars manufactured after September 1, 1986, must have automatic occupant crash protection. After September 1, 1987, the percentage is raised to 25 percent; after September 1, 1988, it is raised to 40 percent; and after September 1, 1989, all new cars must have automatic occupant crash protection.

To enable the manufacturers to determine at the beginning of the model year how many automobiles must be manufactured with automatic crash protection, the percentage of automobiles to be covered will be based upon each manufacturer's average number of automobiles produced in the United States during the prior three model years. If, for example, the manufacturer sold 3 million cars in model year 1984, 3.2 million in model year 1985, and 3.7 million in model year 1986, its three-year average would be 3.3 million automobiles; for model year 1987 (beginning September 1, 1986) it would have to equip 10 percent of 3.3 million—330,000 automobiles—with automatic occupant crash protection systems.

The Department decided to phase in the requirement for automatic occupant crash protection for a number of reasons.

First, by phasing-in, some automatic protection systems will be available earlier than if implementation were delayed until the systems could be installed in all automobiles. The earliest the Department could have required automatic protection in 100 percent of the fleet would have been September 1, 1987. Manufacturers' comments to the docket on lead-time for automatic belts ranged from immediately, for some cars such as the VW Rabbit, on which automatic belts are now offered as an option, to 3–4 years for all cars. Estimates for airbags ranged from 2 years for driver side airbags on some models on which these devices were already planned to be offered as options (some Mercedes, BMW, and Volvo car lines) to 5 years for airbags for some companies (e.g., Chrysler and Saab). Differences in lead times among manufacturers are due to such factors as the number of model lines a company has, previous research and development efforts and supplier considerations. The 36 months leadtime needed for automatic belts, *inter alia,* is required to develop spool-out features and other components on some nondetachable belts in order to maximize consumer acceptability in terms of entry/egress. Detachable belts could require vehicle modifications to strengthen belt attachment points on the door or integrate door and roof strength to accommodate the belt anchorage. While some driver airbags could be introduced with 24 months lead-time, available evidence suggests that many vehicle models will require major modifications to the steering wheel and column and extensive instrument panel modifications or redesign, including glove box relocation, for passenger airbags. Testing of occupant kinematics on the passenger side is also required. Because of the number of models

involved, differing car sizes and available industry resources, it is the Department's judgment that at least a 48-month leadtime would have been required for full front airbags.

If the Department had required full compliance by September 1, 1987, it is very likely all of the manufacturers would have had to comply through the use of automatic belts. Thus, by phasing-in the requirement, the Department makes it easier for manufacturers to use other, perhaps better, systems such as airbags and passive interiors.

Phasing-in also permits consumers and the Department to develop more information about the benefits of these systems, thus enhancing the opportunity to overcome any public resistance to automatic protection. Over the first three years, consumers will have a choice as to whether they purchase an automobile with automatic protection. Since they will not be forced to accept them, the Department expects that they will be more likely to be open-minded about their benefits.

Another advantage of phasing-in the requirement for automatic protection is that it is possible that by the time two-thirds of the population are covered by MULs, the manufacturers will have made progress in designing and producing these systems at a lower cost and a significant number of consumers will continue to demand them from the manufacturers as either standard or optional equipment.

The specific percentages used for the phase-in were chosen because they balance technological feasibility with the need to encourage technological innovation. These percentages should also provide the gradual phase-in that the Department believes will help build up public acceptance.

To ensure compliance with the phase-in requirement, it will be necessary for each manufacturer to submit a report to the Department of Transportation within 60 days of the end of each model year certifying that it has met the applicable percentage requirement. The report would have to separately identify, by Vehicle Identification Number (VIN) number, those cars that the manufacturer has equipped with automatic seatbelts and those cars that it has equipped with automatic airbags or some form of occupant protection technology. The Department will issue an NPRM on this matter in the very near future. In the event that a manufacturer fails to comply with the percentage requirement under the phase-in schedule, the Department has appropriate enforcement authority, i.e., civil penalties.

Thus, the use of a phase-in appropriately takes into account the abilities of the different manufacturers to comply with the requirement, encourages the use of different, and perhaps better, means of compliance, and provides the public with an opportunity to better understand the value of automatic protection. The phase-in will permit the manufacturers to ensure that whatever system they use is effective, trouble-free, and reliable. By starting off with a relatively small percentage and building up to full compliance, the phase-in will provide the manufacturers with a better opportunity to manage unforeseen development and production problems and, as a result, also make it less likely that consumers will develop adverse impressions based upon earlier experience.

Some commenters suggested that the manufacturers would use the cheapest system to comply with an automatic restraint requirement under our SNPRM MUL alternatives. They said the short time allowed for passage of MULs would force the manufacturers to choose the least expensive alternative so that they would lose little in investments if sufficient numbers of MULs passed. The Department does not agree with this contention. It believes that competition, potential liability for any deficient systems and pride in one's product would prevent this. The phase-in schedule should provide adequate time to design and produce high quality systems.

The Credit for Nonbelt Restraints

The rule also permits manufacturers to receive extra credit during the phase-in period if they use something other than an automatic belt to provide the automatic protection to the driver. For each car in which they do so, they will receive credit for an extra one-half automobile toward their percentage requirement. It will be the manufacturer's option whether to use the same nonbelt technology to provide the automatic protection to the passenger; however, such protection must be automatic—the manufacturer may not use a manual belt for the right front seat. As a result of this option, manufacturers will be able to get extra credit for the use of airbags, passive interiors, or other systems that meet the test requirements of the rule.

There are a number of reasons for the Department's decision to permit this option. First, it believes that the primary system that would be used under this "extra credit" alternative would be the airbag. As the data in Table 5 clearly illustrate, airbags should provide very significant safety benefits. Even though fewer cars would be equipped with automatic protection if extra credit is given for airbag automobiles, airbags—when used with belts—are very effective. In addition, the Department believes that there is a definite advantage in the initial stages of compliance with this rule to encourage the use of various automatic protection technologies. This should promote the development of what may be better alternatives to automatic belts than would otherwise be developed. If enough alternative devices are installed in automobiles during the phase-in period, it will also enable the Department to develop a sufficient data base to compare the various alternatives to determine whether any future modifications to the rule to make it more effective are necessary or appropriate.

Both the Act and the Supreme Court's decision last year provide the Department with the necessary flexibility to establish safety standards that are tailored to engineering realities. Recognizing some of the technological problems, for example, that have been discussed earlier with respect to airbags and small cars and coupling this with a desire to comply with the statutory safety objectives with the best possible systems, the Department believes it appropriate to establish a regulatory scheme that provides enough flexibility for the best possible systems to be developed.

Rationale for Not Adopting Other Alternatives

Retain

We have determined, for reasons more fully explained in the prior section—"Rationale for Adoption of the Rule," not to simply retain the existing requirements for automatic occupant crash protection. Simply retaining the existing rule would result in the use of detachable automatic seatbelts in nearly all (i.e., ninety-eight or ninety-nine percent) cars. The amended rule the Department has adopted will encourage more effective solutions to the nation's safety problems, and it should result in the prevention of even more deaths and injuries.

Amend

Airbags only. Despite the potentially large safety benefits that would result from the use of airbags, there are a number of reasons why the Department has determined that airbags should not be required in all cars.

Costs. As we have discussed in more detail elsewhere in this preamble, the

Department has estimated that airbags will cost $320 more per car than manual belts. They will also increase fuel costs by $39 over the life of the car. In addition, the replacement cost for a deployed airbag is estimated to be $800. Because of the high cost of airbags, physical damage and comprehensive insurance premiums will also increase, adding over $18 to the lifetime cost of the vehicle. On the other hand, automatic belts would only add $40 for the equipment, $11 in increased fuel costs, and would not adversely affect physical damage and comprehensive insurance premiums. Thus, although airbags may provide greater safety benefits, when used with belts, and potentially larger injury premium reductions than automatic belts, they are unlikely to be as cost effective.

Moreover, there is still a great discrepancy between the Department's airbag cost estimates and those of industry, while the Department's estimates for the cost of automatic belts are much closer to those of industry. If, despite the Department's ability to fully justify our cost estimates, airbags are priced much higher than it has estimated, it will further compound this problem.

Finally, the high cost of replacing an airbag may lead to its not being replaced after deployment. The result would be no protection for the front seat occupants of such an automobile.

Technical Problems: Several technical problems concerning airbags have been mentioned by manufacturers, consumers, and the vehicle scrapping industry. One technical concern involves the alleged dangers of sodium azide. Some commenters claim that sodium azide, the solid propellant which is ignited and converts to nitrogen gas to inflate the air cushion, is hazardous. It is claimed that it is an explosive, is mutagenic, toxic, and an environmental hazard. As explained in the FRIA, sodium azide is not an explosive. Rather it ignites, under controlled conditions, to form harmless nitrogen gas. Furthermore, studies have continually shown that it is not mutagenic or carcinogenic in mammals, due to its inactivation by the liver. Sodium azide can be toxic, but its transport in hermetically sealed containers does not pose a hazard to manufacturers, dealers, repairmen, or consumers. The scrapping of vehicles with undeployed airbag canisters does have to be done under controlled conditions so as to avoid adverse environmental effects and, although the risk is small, the Department will continue to work with manufacturers and the vehicle scrapping industry in this area.

Another concern involves the technical problem of out-of-position occupants in small cars. Manufacturers claim that little development work has been done with airbags for small (e.g., subcompact or smaller) cars and that a particular problem in these vehicles is how to protect small children, who are not properly restrained, from the more rapidly deploying air cushion in such vehicles. The Department believes that this problem can be mitigated and that technical solutions are available, as described in the FRIA. However, the lack of experience in this area, as well as the lack of experience for some companies in any form of airbag development, make the Department reluctant to mandate across-the-board airbags.

Some people have argued that the failure to issue a rule that will require at least some airbags might mean the end of the development of airbag technology. In this regard, it must be remembered that some improvements—such as those made by Breed Corporation—have come about without regulation. Moreover, three manufacturers—Mercedes, Volvo, and BMW—are currently planning to offer driver only airbags in their automobiles even though not required, and Ford will produce driver airbags for 5,000 U.S. General Services Administration cars next year. It is, therefore, possible and likely that others may follow suit to meet the competition. Furthermore, the extra credit provided during the phase-in should encourage manufacturers to equip at least some of their cars with airbags.

Public Acceptability: Airbags engendered the largest quantity of, and most vociferously worded, comments to the docket. Some people have serious fears or concerns about airbags. If airbags were required in all cars, these fears, albeit unfounded, could lead to a backlash affecting the acceptability of airbags. This could lead to their being disarmed, or, perhaps, to a repeat of the interlock reaction. Some people are, for example, fearful of the dangers of the sodium azide used to deploy the airbag. People are also concerned that the airbag will inadvertently deploy and cause an accident or that it will not work at the time of an accident. Some people are also concerned because they feel less secure in an automobile unless they have a 3-point belt wrapped around them (and if the Department requires a 3-point belt with an airbag, the costs will be even higher) and are thus unsure that they will be protected at the time of an accident.

Although the Department believes that these concerns can be adequately addressed, these consumer perceptions must be recognized as real concerns. It may be easier to overcome these concerns if airbags are not the only way of complying with an automatic occupant protection requirement. Under the rule being issued, if people have concerns about airbags, they can purchase automobiles that use automatic belts. The real world experience that will come with the production of airbag equipped cars during the phase-in period should help to mitigate these fears.

Effectiveness: Airbags are not designed to provide protection at barrier equivalent impact speeds less than approximately 12 mph. In addition, in order to provide protection comparable to that of a 3-point belt, they must be used in conjunction with at least a lap belt. Despite this, the overall benefits provided by an airbag, because of its extremely high "usage" rate, may be much better than those provided by automatic belts. Widespread use of both systems is the only way to develop definitive data.

Performance Standards: Several commenters questioned the Department's authority to issue an airbag only standard, claiming it would be a "design" standard. Even if the Department could legally issue a performance standard that could only be met by an airbag under present technology, it believes that by taking away the manufacturers' discretion to comply with an automatic occupant restraint requirement through the use of a variety of technologies, it creates a number of problems. First, by restricting the manufacturers, the Department runs the risk of killing or seriously retarding development of more effective, efficient occupant protection systems. With real world experience, the Department may find, for example, that automatic belts would be used by much higher percentages of occupants than currently anticipated. The manufacturers also would not be able to develop better automatic belt systems that may be more acceptable and, therefore, used by larger numbers of people. This may result in automatic belts that save as many lives but at a much lower cost than airbags. Similarly, the development of passive interiors, being pursued by GM, would be stymied under such an option. The Department believes an airbag only decision would unnecessarily stifle innovation in occupant protection systems.

In addition, if airbags were not mandated in every car, people may be

more willing to give them a chance to prove themselves than they would be if they were forced to buy them. If consumers are concerned about automatic belts, it may cause manufacturers to make greater efforts to lower the costs of airbags to make them more acceptable as an alternative.

Airbags and/or Nondetachable Seatbelts. The rationals provided in the preceding sections for adopting the new rule and for not retaining the old rule or amending it to require airbags in all cars essentialy provides the basis for the Department's decision not to amend the old rule to require either airbags or nondetachable belts or just nondetachable belts; (i.e., would not permit the use of detachable belts to comply with the automatic protection requirements). It is also concerned that nondetachable belts may be too inconvenient and restrictive, resulting in serious adverse public reaction if required in all cars. (See the discussion on nondetachable belts in the first part of the "Analysis of the Alternatives.")

Limited Seating Positions. Several of the alternatives would have required all or some particular type of automatic protection for specified seating positions. For example, airbags would have been required for only the driver position under one alternative. As explained under the section on "Rational for Adoption of the Rule," the Department has determined that the data on center seats warrants exempting that position from automatic protection requirements. It also has decided that, during the phase-in period, it is appropriate to give "extra credit" for providing automatic protection to the driver through non-belt technology, such as airbags and passive interiors, to provide an incentive for developing and producing these other, possibly better, systems. The Department has determined that existing data, discussed earlier in the preamble and in the FRIA, does not warrant exempting the front right seat or providing any other special protection to the driver.

Small Cars. The SNPRM raised for comments the alternative of providing airbag protection for the drivers of small cars and questioned the safety justification for this. We have not received data that indicate that small cars are always less safe than large cars. For that reason, we have no justification for requiring any special protection for small cars.

Rescind

After a full review of the rulemaking docket and performing the Analysis contained in our FRIA, we have concluded that the Supreme Court decision in the *State Farm* case precludes us from rescinding the automatic occupant protection requirements at this time based on the present record in this rulemaking.

The Supreme Court noted that "an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change *beyond that which may be required when an agency does not act in the first instance.*" 103 S. Ct. at 2866 (emphasis supplied).

To avoid having its actions labeled "arbitrary and capricious," the Supreme Court said that "the agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.' " 103 S. Ct. at 2866–67.

The Supreme Court also held that, if automatic belts are not justifiable, the agency should have considered requiring airbags in all automobiles. The Court found that:

> Given the effectiveness ascribed to airbag technology by the agency, the mandate of the Safety Act to achieve traffic safety would suggest that the logical response to the faults of detachable seatbelts would be to require the installation of airbags. 103 S. Ct. at 2869.

It added that—

> Given the judgment made in 1977 that airbags are an effective and cost-beneficial life-saving technology, the mandatory passive restraint rule may not be abandoned without any consideration whatsoever of an airbags-only requirement. 103 S. Ct. 2871.

The primary issue concerning automatic belts is the anticipated usage of the detachable belts. Although the Department cannot establish with certainty the level of usage it can expect with automatic belts, the information gathered during the comment periods on the current rulemaking NPRM and SNPRM does assist DOT in answering the Supreme Court's finding that:

> [T]here is no direct evidence in support of the agency's finding that detachable automatic belts cannot be predicted to yield a substantial increase in usage. The empirical evidence on the record, consisting of surveys of drivers of automobiles equipped with passive belts, reveals more than a doubling of the usage rate experienced with manual belts. 103 S.Ct. at 2872.

Although some would argue that the belts will merely be detached after most drivers or passengers first enter the car and never used more than current manual belts are used, no evidence has been found to support this. In responding to NHTSA's 1981 rescission argument that "it cannot reliably predict even a percentage point increase as the minimum level of increased usage," the Supreme Court said:

> But this and other statements that passive belts will not yield substantial increases in seatbelt usage apparently take no account of the critical difference between detachable automatic belts and current manual belts. A detached passive belt does require an affirmative act to reconnect it, but—unlike a manual seatbelt—the passive belt, once attached, will continue to function automatically unless again disconnected. Thus, inertia—a factor which the agency's own studies have found significant in explaining the current low usage rates for seatbelts—works in favor of, not against, use of the protective device. Since 20 to 50% of motorists currently wear seatbelts on some occasions, there would seem to be grounds to believe that seatbelts used by occasional users will be substantially increased by detachable passive belts. Whether this is in fact the case is a matter for the agency to decide, but it must bring its expertise to bear on the question. 103 S.Ct. at 2872.

Although the Department believes that the existing automatic belt usage data is not generally applicable to the entire vehicle population, there is an *absence of data* that indicate that there will be no increase in usage associated with detachable automatic belts. The record of this rulemaking only has assertions that this will be so, but it lacks support for those assertions.

The Supreme Court has made it clear that it believes the better arguments support increased usage. Not only does the Department have no new evidence to counter this, but, for the first time, the manufacturers have acknowledged that, at least initially, automatic detachable belts will result in an increase in usage. The Department also now believes that some level of increase will occur based on the reasons people give for not using manual belts (e.g., "forget" or are "lazy"). Thus, it has no evidence that the belts will not be used, but merely questions about how large an increase will occur. The Supreme Court said:

> [An agency may not] merely recite the terms "substantial uncertainty" as justification for its actions. The agency must explain the evidence which is available, and must offer a "rational connection between the facts found and the choice made." * * * Generally, one aspect of that explanation would be a justification for rescinding the regulation before engaging in a search for further evidence. 103 S.Ct. 2871.

It could also be argued that the public will not accept automatic belts because of such problems as their obtrusiveness and inconvenience. Although an argument about public acceptability can be made, strong data on which to base it do not exist. As is discussed in more detail elsewhere in this preamble, the public opinion surveys that have been taken are flawed to the extent that they will not withstand close scrutiny and

support a rescission decision that has already been struck down once by the Supreme Court.

The Supreme Court also found that, if detachable belts were unacceptable to the agency, then it "failed to articulate the basis for not requiring nondetachable belts under Standard 208." 103 S.Ct. at 2873. The Court added that, "while the agency is entitled to change its view on the acceptability of continuous passive belts, it is obligated to explain its reasons for doing so." 103 S.Ct. at 2873. Finally, the Court said that

> The agency also failed to offer any explanation why a continuous passive belt would engender the same adverse public reaction as the ignition interlock, and, as the Court of Appeals concluded "every indication on the record points the other way." * * * We see no basis for equating the two devices: the continuous belt, unlike the ignition interlock, does not interfere with the operation of the vehicle. 103 S.Ct. at 2873–74.

Again, "substantial uncertainty," 103 S.Ct. at 2871, will not suffice and there is no substantive evidence in the rulemaking record to refute the point made by the Court.

The Department has no new evidence that nondetachable belts are not an acceptable means for reducing deaths and injuries. Although there are some comments in the current docket that some people will dislike them and may even cut them or otherwise destroy them, it is primarily speculation; there is no clear data. Moreover, even if 20 or 30 or even 40 or 50 percent of the people find some method for defeating the belt, the evidence in the record indicates that it will still result in a significant reduction in deaths and injuries for the remainder who do not.

Some people expressed concern about emergency egress from nondetachable belts. The Supreme Court had the following to say on this:

> * * * NHTSA did not suggest that the emergency release mechanisms used in nondetachable belts are any less effective for emergency egress than the buckle release system used in detachable belts. In 1978, when General Motors obtained the agency's approval to install a continuous passive belt, it assured the agency that nondetachable belts with spool releases were as safe as detachable belts with buckle release. 103 S. Ct. at 2873

Manufacturers commented that it would likely be more difficult to extricate oneself from a nondetachable as compared to a detachable automatic belt. However, they did not claim that it represented an "unsafe" condition, and again, there is no new evidence to buttress their concerns.

Finally, there are a number of attractive arguments that are based in part on the following theme: The presence of the government in the middle of the debate over passive restraints has distorted the activities of both automobile manufacturers and insurance companies; if the marketplace has been allowed to work, insurance incentives would have led to the voluntary adoption of one or more systems by the manufacturers. Whether these arguments are correct or not, they cannot be considered in a vacuum. In fact, the context provided by the Supreme Court is quite harsh:

> For nearly a decade, the automobile industry waged the regulatory equivalant of war against the airbag and lost—the inflatable restraint was proven sufficiently effective. Now the automobile industry has decided to employ a seatbelt system which will not meet the safety objectives of Standard 208. This hardly constitutes cause to revoke the standard itself. Indeed the Motor Vehicle Safety Act was necessary because the industry was not sufficiently responsive to safety concerns. The Act intended that safety standards not depend on current technology and could be "technology-forcing" in the sense of inducing the development of superior safety design. 103 S.Ct. at 2870. (Footnotes omitted).

The history of this rulemaking, the *State Farm* decision, and the rulemaking record have put us in a position where rescission of the automatic occupant restraint requirements—unless there is a very substantial increase in use of seatbelts in the future—cannot be justified. On the other hand, as discussed in detail elsewhere in the preamble, such a substantial increase as a result of the widespread enactment of MULs would provide increased safety benefits much more quickly and at a much lower cost, thus making rescission clearly justifiable. As the Supreme Court said, "We start with the accepted ground that if used, seatbelts unquestionably would save many thousands of lives and would prevent tens of thousands of crippling injuries." 103 S. Ct. at 2871. It also noted that the Department originally began the passive restraint rulemaking exercise because "[i]t soon became apparent that the level of seatbelt usage was too low to reduce traffic injuries to an acceptable level" 103 S. Ct. at 2862. The data set out elsewhere in this preamble and in the Final Regulatory Impact Analysis demonstrate the dramatic reductions in deaths and injuries that widespread usage of the manual belt systems would achieve. Thus, the Department has concluded that if two-thirds or more of the American people are covered by such laws, the need for an automatic occupant restraint requirement would be obviated.

Demonstration Program

Because of the length of time a demonstration program would take, the Department believes that it would be necessary to justify rescission of the old rule under this alternative. It also believes that the phase-in portion of the amended rule will achieve the public education/acceptance aspects of any demonstration program.

Other Mandatory Use Law Alternatives

The Department's rationale for not adopting the other MUL alternatives is explained more fully in the preceding sections. These other alternatives are generally deficient in one of two respects: they either make it necessary for the Department to justify rescission under current circumstances or the requirements they impose are much too burdensome.

Under the alternative raised in the NPRM, the Department would have sought the enactment of MULs. The Department could not be certain that a sufficient number of MULs would pass or that, if passed, they would contain the necessary provisions concerning penalties, enforcement, sanctions, education and waivers. As a result, the Department could not determine whether the necessary level of benefits would be achieved.

Under the other SNPRM alternative, the Department would have waived the requirement for automatic restraints in individual states that enacted MULs. This alternative would have required the "regulation" of the sale of the manual belt cars to ensure that they were not purchased by people not covered by MULs. It also would have had adverse market impacts if consumers delayed their purchases of cars, in anticipation of their states passing MULs, in order to avoid purchasing automatic restraints.

Legislation to Require Consumer Option

As with some of the previous alternatives, this approach would require the Department to justify rescission of the old rule. In addition, it would place a tremendous economic burden on the manufacturers to have to be able to provide a variety of systems on each model. It would, in turn, raise the cost of all automobiles for the consumer.

Airbag Retrofit Capability

This, too, would require justification for rescission. It would also result in increasing the cost of all cars even if no one ever retrofitted a car.

VI. Testing Procedures

Repeatability

The single most significant repeatability issue related to test procedures, as reflected in comments to the docket, was that of the repeatability of the barrier crash test results. Nearly all manufacturers claim that because test result differences are encountered in repeated tests of the same car, and since these differences are large, they can not be certain that *all* their vehicles will be in compliance even when their development and compliance tests show that the vehicles are. These large differences, or test variability, place a manufacturer in jeopardy, it is claimed, because NHTSA, while checking for compliance, may find a single vehicle with test results exceeding the maximum values in the standard, even though the manufacturer's results are to the contrary. Thus, they stated, they might have to recall vehicles and make vehicle modifications (which they claim they would not know how to make) even though the vehicles actually comply with the standard. The auto companies say that the test result variances are essentially due to deficiencies in the test procedures themselves as well as the prescribed Part 572 test dummy.

Because of these alleged deficiencies, the argument goes, the standard is neither "objective" nor "practicable" as required by statute. Manufacturers cite court decisions in *Chrysler Corp.* v. *DOT* 472 F.2d 659 (6th Cir. 1972) and *Paccar, Inc.* v. *NHTSA*, 573 F.2d 632 (9th Cir. 1978), to argue their point. In *Chrysler*, the court said that for a standard to be "objective"

> tests to determine compliance must be capable of producing identical results where test conditions are exactly duplicated, that they be decisively demonstrable by performing a rational test procedure, and that compliance is based upon the readings obtained from measuring instruments as opposed to the subjective opinion of human beings. 472 F.2d at 676.

Because manufacturers claim that the only way they can assure compliance is to "overdesign" their vehicles (e.g., because of alleged variances in results, to comply with a HIC requirement of 1000 manufacturers would design their vehicles to only have a HIC of 500), resulting in excessive costs without safety benefit, the *Paccar* case has relevance. In overturning a truck braking standard, the Court said that although the standard's test procedures were "objective," they were not "practicable" because variations in test surface skid numbers required manufacturers

> not simply to comply with the stated standard, but to over-compensate by testing their vehicles on road surfaces substantially slicker than official regulations require. 573 F.2d at 644.

The Department continues to believe, however, that FMVSS 208 is both objective and practicable. Manufacturers have not supplied for the record data to support their claims of excessive test variability nor have they demonstrated that the bulk of any variability is due to test procedures and instruments as compared to vehicle-to-vehicle differences.

The primary, and for most manufacturers the sole, basis for claims of variability was the Repeatability Test Program conducted by NHTSA under its New Car Assessment Program. NHTSA tested 12 Chevrolet Citations in an attempt to ascertain the reliability of publishing barrier crash test results based on a single test. The results of the testing program for HIC (only HIC was mentioned by manufacturers as a variability "problem") were:

	Mean	Standard deviation	Coefficient of variation (percent)
Driver	655	137	21
Passenger	694	77	11

The manufacturers focused on the coefficient of variation (COV) of the driver HIC values—21 percent—and claimed that this is too large. They claim that with this large a COV, they would have to design their vehicles to achieve a HIC no higher than 560 to assure that 95 percent of their cars, when tested, would have HIC values below 1000.

This argument is faulty for several reasons. First, the NCAP results were based on the testing of a single car—the Citation—at a *higher* test speed (35 mph) than required in FMVSS 208 (30 mph). Passing the FMVSS 208 criteria at 35 mph requires a vehicle to absorb 36 percent more energy—since the energy dissipated in a crash is proportional to the square of the speed—than in the required 30 mph crash. The Department would expect that test result differences would be lower at 30 mph since at 35 mph the design limit of certain structural members has been exceeded. Assuming that the COV at 35 mph would be identical or lower than that at 30 mph is without foundation and is counterintuitive to sound engineering theory.

Second, the NCAP data can only be used to derive a COV, at 35 mph, for the Citation. Extending the Citation results to other vehicles is again without basis. For example, Volvo tested four MY 1983 760 GLE vehicles according to the NCAP procedures (although an additional 3 760 GLEs were tested by a laboratory, MIRA, for Volvo, the NCAP procedures may not have been fully followed by that organization and thus can not be combined with Volvo's own data). The results of the four Volvo tests are:

	Mean	Standard deviation	COV (percent)
Driver	898	71	8
Passenger	731	27	4

Here, we see coefficients of variation about 60 percent lower than that shown for the Citation. Although not as many tests were run as for the Citation, the Volvo 760 GLE results cast doubt as to whether the Citation results can be applied to all vehicles. The Department also points out that even the Citation results for the *passenger*, which tended to be ignored in the docket comments (manufacturers instead tended to focus on the higher COV for the driver) exhibit half the COV cited by the auto companies.

Ford commented that the Volvo data, "though nominally somewhat lower, was not significantly different than that found in the Citation * * *" Ford, however, used all seven Volvo tests. Since these tests were not all conducted similarly, they are from two different statistical "universes" and can not be combined for statistical purposes. Nor does Ford disagree that the Volvo results are lower than for the Citation. And, Ford only compared the standard deviation of the Citation and 760 GLE results. Since the *mean* was higher for the 760 GLE than the Citation, and since the COV is equal to the standard deviation divided by the mean, had Ford compared COVs it might have found that these differences *were* statistically significant. Thus, Ford's use of the Volvo is inaccurate in that it: (1) Combines two unlike data sets—the MIRA and Volvo 760 GLE tests; (2) fails to examine coefficients of variation, a better descriptor of variance than the standard deviation; and (3) only examines the larger differences associated with driver HIC, and ignores the lower, passenger variances.

Ford also supplied, in response to the SNPRM, data which the company claims shows that their 33 Mercury tests, with airbags, conducted in 1974 also exhibited the same variances. Ford took the results of these tests on MY 1972 Mercurys, which were conducted at 30 mph, and "scaled" them to 35 mph. They claim that after "scaling," the Mercurys exhibited the same standard deviation as the Citation.

The Department has examined the actual 30 mph test results of these Mercurys, contained in Ford's February 1976 report, "Airbag Crash Test Repeatability," ESRO Report No. S-76-3, and finds that the results are not just for frontal barrier tests but also 30 degree angle tests. At least nine of the 24 frontal tests were at the oblique angle. Although FMVSS 208 requires angle tests, the comparison of angle plus frontal results to only frontal results is somewhat inappropriate.

Furthermore, Ford again compares only the standard deviations of driver HICs. After "scaling," Ford shows the driver HIC standard deviation to be 137. However, the standard deviation based on Tables 4-1 of the Ford report show driver HIC standard deviations, without "scaling," in frontal crashes to be only 80, and the COV in frontal crashes, given the mean of 479, is 16.7 percent. As Ford somehow *converted* these values, or some other value representing both frontal and oblique crashes, from 30 mph to 35 mph, Ford is implicitly agreeing with NHTSA that one can not compare statistical results from crash tests conducted at different speeds.

These Departmental positions—that the Citation tests may not be applicable to all cars and that 35 mph test results may not be applicable to results at 30 mph—were raised in the SNPRM wherein the Department stated "We are also interested in comments on the relevance of the Citation variability tests (conducted at 35 mph) to the FMVSS 208 compliance tests (specified to be conducted at 30 mph) and the applicability of the new Citation results to other vehicles." Other than the above cited Ford data, responses were submitted by only GM, which provided data based on 30 mph sled tests which showed COVs of 11 and 8 percent for the driver and passenger, respectively, and Volvo, which also provided sled test data showing a mean of 467 and a COV of 12.5 percent. Further, only Ford claimed that "comparable variability" to that resulting from the Citation tests "would be expected for other vehicle models." Other manufacturers failed to address the issue.

Based on the above, the Department concludes that the Citation test results can not, without the analysis of data for other vehicles, be applied to other car models, at lower speeds.

The second reason the Department does not accept manufacturer claims of excessive variability is also related to test speeds. Variability by itself is not a crucial factor for a manufacturer to be concerned about. Rather, it is the combination of variability *and* the mean (or average) value which can be cause for concern. For example, assume that a manufacturer is 95 percent confident that all its HIC test results will be within ±150 points of the mean. If the mean value is 900, the the manufacturer may not be certain that all its vehicles will comply with a criterion whose maximum value is 1000. However, if the mean is 500, then the ±150 variation is of little consequence in ascertaining assurance of compliance.

It is clearly intuitive, due to the 36 percent less energy involved in a 30 mph crash compared to a 35 mph crash, that average test results will be lower at the 30 mph barrier crash speed than at the 35 mph speed used in the NCAP program. No commenter to the docket argued to the contrary. Therefore, the issue of variability can not be examined in isolation but *must* be analyzed in the context of the mean value.

Reexamining the Ford Mercury data, conducted with airbags at 30 mph, the mean HIC value, taken from page 4-20 of the Ford report, is 319.9. With such a low mean, the derived variance is irrelevant for compliance purposes. The Department wishes to point out that: (1) Based on its NCAP testing, even with manual belt systems and when tested at 35 mph, 80 percent of the dummy drivers and about 60 percent of the passenger dummies meet the FMVSS 208 injury prevention criteria with mean HICs of 899 and 845, respectively. These percentages would of course increase and the means decrease at 30 mph. And (2) all *airbag* tests shown mean HICs in the 400-500 range, a range wherein variability again becomes meaningless for assuring compliance. For instance, tests with airbags for MY 1972 Pintos showed maximum HICs in the 500-600 range with the median value less than 400; the maximum and mean for MY 1972 Mercurys were less than 700 and less than 400, respectively; and for MY 1974-76 GM airbag cars the value were under 600 and about 450, respectively.

Thus, mean HICs for automatic belts systems in 30 mph barrier crashes would be lower than the 899 and 845 values observed from the 35 mph NCAP program and for airbag equipped cars would likely be in the 400-500 range, making variability a moot issue.

A third reason that the Department believes that variability is not so significant an issue as to preclude the standard's reinstatement is that manufacturers have not demonstrated that the test procedures and test dummy are the major causes of variability. GM and Volvo provided sled test data which showed COVs of about 10 percent. Since a sled test provides a steady crash pulse, it was argued that most of, if not all, the variability seen was due to dummy and test procedure variances. Without arguing the point, the Department notes that these manufacturers failed to address the question of whether this 10 percent level of variability, when combined with an expected mean, is unacceptable. For instance, if it is assumed that the mean 30 mph passive belt HIC is 800—which is not unreasonable given current means of between 845 and 899 at 35 mph—a COV of 10 percent translates into a standard deviation of 80. Since 95.45 percent of all test results fall within the mean ±2 standard deviations, a manufacturer can be sure that more than 95 percent of its cars will have HICs below 960 (800+2 [80]) and the manufacturer could be about 98 percent certain that all tested cars will have values below 1000. A lower mean would increase the above-mentioned percentages.

In the SNPRM, the Department requested comments on what level of variability was deemed "reasonable," given that some variability will always exist. Only Renault provided a quantitative answer, saying that "the variation coefficient must not exceed a maximum of 10 percent." Although Renault provided no further justification for its recommendation, the Department notes it is nearly identical to the variation contributed by the test procedures and dummy, according to Volvo and GM.

Manufacturers generally asserted that the observed variability was not caused by vehicle-to-vehicle differences but by the test procedures and use of Part 572 dummy. In the SNPRM, the Department said that it did not believe that the dummy contributed significantly to test variability. The Department, after reviewing the docket, still retains this conclusion. The 1976 Ford repeatability test report concluded that "that portion of the variability in the test results which can be attributed to differences between the nine part 572 dummies * * * is small for the HIC measurements and virtually nil for the chest g and femur load measurements." Ford engineers also said in an SAE paper (SAE paper 750935) that "differences in test readings from one test dummy to another were rather small, especially when compared to other factors * * * In fact, the variance in test readings associated with differences among dummies was essentially zero for chest g and for femur loads." Renault, in response to the SNPRM, said that "the present Part 572 dummy is not the major cause of the dispersion of results."

In its NCAP repeatability program, NHTSA found that differences in dummy calibration results have "no correlation * * * to dummy response results in the vehicle crash event." (SAE paper 840201, February 1984). NHTSA further noted that the Citation's "structural response * * * displayed significant variability" from vehicle-to-vehicle. These differences included variations in engine cradle buckling, floor pan and toe board buckling, and irregular motion of the steering column. NHTSA concluded that "previous safety research has demonstrated that these structural behavior characteristics do have influence on dummy HIC values, possibly of major proportions." Because of the large variations among vehicles and the lack of correlation of dummy calibration to HIC results, NHTSA believes that a large part of the test variability is due to vehicle variability.

In summary, the Department finds that FMVSS 208 meets all statutory criteria for objectivity and practicability, that manufacturers have not demonstrated that there would be either excessive variability in total or due to the test procedures alone, and that compliance with FMVSS 208, particularly with airbags, does not represent an insurmountable burden to manufacturers.

Compliance Procedure

Having concluded that any test variability is not sufficient to delay the standard's reinstatement, the Department is still concerned that manufacturers believe themselves to be in unacceptable compliance jeopardy. To reduce this jeopardy, manufacturers suggested that a "design to conform" policy be adopted. They claimed this was neither inconsistent with court decisions regarding the required objectivity of standards nor would it materially affect vehicle design, since they would still have to demonstrate, through crash tests, that their design could achieve the required levels of compliance. Furthermore, it was argued by VW that NHTSA presently operates under this concept.

We agree with VW that, in the event of a nonconforming test result, NHTSA will seek to obtain manufacturer compliance, test data and/or conduct a second compliance test itself, prior to asserting that a particular model is in noncompliance. The Department is unaware of any instance in which NHTSA has sought remedy under the statute for noncompliance with a safety standard based on only a single test result. Thus, for example, if NHTSA found a car with a HIC value of 1050 and, after reviewing manufacturer test data and/or conducting another test, both of which demonstrated compliance, it would likely determine that the manufacturer had exercised "due care" and would not seek remedy under the statute.

However, the *Chrysler* Court disapproved of any agency offering to investigate whether differences in test results (between manufacturer tests and agency compliance tests) were sufficient to determine a noncompliance. The court stated that manufacturers needed objective assurances and there was no room for agency investigations. Thus, the Department recognizes that automobile companies need some guarantee that should one car out of a million, for example, be found to fail the compliance test, that all one million will not have to be recalled.

The guarantee sought by the industry, "design to conform," though, is not acceptable. As pointed out in the SNPRM, the Department believes such an approach introduces unacceptable subjectivity into the determination of compliance with the standard, in contravention to the decisions of the courts to minimize non-objective determinations of noncompliance. Instead, since NHTSA already exercises discretion in compliance cases, we will seek, through a subsequent Notice to be issued shortly, to provide such assurances without compromising either safety or the necessary statutory objectivity. Essentially, we will propose to amend FMVSS 208 by recognizing that a vehicle shall not be deemed in noncompliance if a manufacturer has exercised "due care" in designing and producing such vehicle. Rather than increase the subjectivity of the compliance process by introducing a "design to conform" concept, NHTSA will explicitly recognize in FMVSS 208 the statutory direction expressed in section 107(b)(2) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1397), that the penalties associated with producing a noncomplying vehicle "shall not apply to any person who establishes that he did not have reason to know *in the exercise of due care* that such vehicle * * * is not in conformity with applicable Federal motor vehicle safety standards * * *" (emphasis added).

Test Dummies

As stated earlier, the Department continues to believe that the Part 572 test dummy fully meets all statutory criteria and is not a major source of test result variability. Most manufacturers, however, disagreed. Volvo contended that the dummy has "serious limitations" and must be more durable, repeatable, and trouble-free. Toyota said it could not be sure of the influence of the dummy on test results. Mercedes also said that the Part 572 dummy is not sufficiently repeatable while Ford said that the dummy's calibration is repeatable but its crash test performance may not be. American Motors said that the Part 572 dummy is a state-of-the-art compromise and lacks in measurement fidelity.

While not claiming that the Part 572 dummy is not repeatable or fails to meet statutory criteria, GM urged NHTSA to approve the use of the Hybrid III dummy as an alternative test device. GM said that the Hybrid III "offers significant improvements over the part 572 dummy relative to biofidelity of frontal head, chest and knee responses, fore-aft neck bending, ankle and knee articulation and automotive seated posture." Nissan agreed that the Hybrid III is a superior dummy which demonstrates greater repeatability. Conversely, Mercedes said that the Hybrid III is not any more repeatable than the Part 572 dummy.

As part of its petition to use the Hybrid III, GM submitted a paper by Mertz ("Anthropomorphic Models," GM, USG 2284, Part III, Attachment I, Enclosure 3) which stated that the Part 572 dummy (actually, the Hybrid II dummy, also developed by GM) has "good repeatability, durability, and serviceability." "The Part 572 dummy represents the state-of-the-art of dummy technology in the early 1970's."

Based on the conclusions of the Ford Mercury testing and the agency's NCAP testing, NHTSA has concluded that the dummy does not contribute significantly to test variability. Renault agreed with this conclusion. Industry characterizations of the dummy, as shown above, vary considerably, from the Part 572 being a major cause of variability to it not being a major cause, to the Hybrid III being an improvement, to it not being an improvement. Only a few manufacturers provided data to support their contentions but these data, supplied by Ford, GM, and Volvo, based on sled tests, could neither separate the contribution of variability associated with the dummy alone nor demonstrate why an dummy-induced test result variances were so high as to be unacceptable. Since the Department recognized, in the SNPRM, that some variability will always be present it specifically sought comment on the levels of variance which were deemed "unacceptable." Only Renault replied to this direct question and it did not supply a rationale for its conclusion. In the absence of data to the contrary, the Department continues to believe that the current Part 572 test dummy is adequate

to use as a compliance test device in standard 208.

Nevertheless, it is recognized that the Part 572 dummy is more than 10 years old and, we agree with AMC and GM in this regard, is a state-of-the-art compromise. Recognizing that dummy development, especially improved biofidelity—that is, the dummy's replication of actual human motion and potential for injury—is crucial for continued improvements in vehicle safety, NHTSA has been utilizing the Hybrid III dummy in its research and development work, as have GM and other manufacturers. NHTSA recognizes that the Hybrid III dummy does have additional measurement capability over the Hybrid II (Part 572) and, assuming injury criteria can be agreed upon and its repeatability, durability, etc. verified, it could be viewed as an improvement over the Hybrid II. Because of these views, and the data presented in the GM petition, NHTSA will address these issues in a separate rulemaking. Because we have concluded that the current Part 572 dummy is fully adequate to use in testing to the injury criteria specified in FMVSS 208, action on the Hybrid III dummy is irrelevant for the purposes of this rulemaking. Should NHTSA decide to permit the use of the Hybrid III as an alternative test device, as GM has petitioned, it would not pose any additional burden on manufacturers since they could still use the current Part 572 dummy for compliance purposes. If NHTSA decides to substitute the Hybrid III for the Hybrid II as the compliance test device specified in Part 572, a gradual phase-in period would be provided so as not to interfere with manufacturer leadtime and the timely implementation of the automatic occupant protection provisions of FMVSS 208.

Injury Criteria

Several manufacturers recommended that the injury criteria associated with potential head injury be adjusted in two ways: (1) To eliminate the measurement of HIC in this absence of head contact, and (2) to increase the HIC in case of a head strike to 1500 from its current level of 1000.

It is recognized by NHTSA that the Head Injury Criterion (HIC) was primarily developed from tests of forehead impacts, resulting in acceleration of the brain in the anterior-posterior (i.e., forward and backward) directions. This was pointed out in the SNPRM, wherein the Department also briefly discussed accident and test data, including information from NHTSA itself, which suggested a very low probability of brain injury in the absence of head contact. However, it was suggested that measuring HIC in non-contact situations could serve as a surrogate for potential neck or other injuries.

Volvo supplemented the above arguments by stating that the use of HIC for other than what was the basis of its development—forehead impacts in the anterior-posterior directions—results in less dummy biofidelity. Volvo suggested that this expanded use of HIC, beyond what it was intended to measure, is inappropriate. They stated that if neck injuries are of concern, then other criteria, related solely to the neck, be used. This position on neck injuries was supported by Peugeot, Renault, Ford, and GM. Mercedes and MVMA also opposed measuring HIC in non-contacts but did not mention its use as a surrogate in potentially preventing neck injuries. Allstate opposed its elimination in such crash situations, claiming it protects occupants from cervical and spinal injuries.

The primary derivation of HIC from head impact tests is not in question. HIC was developed from the Wayne State Tolerance Curve (WSTC) which was itself based on the hypothesis that the dominant head injury mechanism was linear acceleration.

The Department agrees with the commenters, based on its own review of the origins of HIC, that its predictive capability of neck injuries is weak. The Department further agrees that the prevention of neck injuries, through assuring that excessive head motion is prevented, is important for automobile safety since neck injuries account for 78.2 percent of all crash-related non-contact harm in passenger cars (see SAE Paper 820242, "A Search for Priorities in Crash Protection," Malliaris, et al., February 1982). The Department also notes that the Hybrid III dummy is capable of neck injury measurements, by monitoring the dummy's neck's axial loading, shear load, and bending movement (see GM's petition, USG 2284 Part III, Attachment I, Enclosure 2). Although the Hybrid III's neck biofidelity may be deficient in that its lateral bending response may not be humanlike and its neck too stiff in axial compression, its measurement of fore/aft bending provides superior biofidelity to the Part 572 dummy, which is incapable of any direct injury measurements (see ibid, Enclosure 3).

The Department thus believes that prevention of neck injury would be better served by direct dummy measurement, measurement which can be made with the Hybrid III. This position was also expressed by the U.S. delegation to ISO/TC 22/SC 12/WG 6 which stated that "the head injury criterion should not be applied in the event of no head impact * * * other injury criteria, perhaps based on neck loads * * *" should be used instead. As part of the subsequent rulemaking mentioned previously, the adoption of neck injury criteria will be proposed. In addition, the issue of noncontact HICs will be further addressed in the context of the current Part 572 dummy. Data relating to the biofidelity of the dummy, in this regard, will be specifically sought.

This issue is not viewed as one which affects the decision regarding FMVSS 208 contained in this notice. Any action by NHTSA in this area should only result in reducing the required test burden, thus additional leadtime should not be required. Action regarding the dummy is viewed by the Department as seeking to continually improve the biofidelity of its anthropomorphic test devices, and is thus separate from, although related to, the 208 decision.

Although several manufacturers requested that the HIC criterion, even when there is a head strike, be raised to 1500, the Department will not take any action on that issue at this time. The 1500 HIC level is the subject of a petition for rulemaking by the CCMC. NHTSA will respond directly to this petition at the same time that it prepares the aforementioned rulemaking action.

Oblique Test Requirement

The SNPRM contained a proposal to eliminate the requirement to test compliance at angles up to 30° from the longitudinal direction. The basis for this proposal was data from Ford's Airbag Crash Test Repeatability report, which consistently showed lower dummy injury readings in angular crashes, especially for HIC and chest g's, and NHTSA test data which agreed with that from Ford. Chrysler, BMW, Volvo, Nissan, Mercedes, Honda and Mazda agreed with the proposal, claiming that no insight in restraint performance was provided by the test, it was not essential for verifying compliance since test results were lower than in the direct frontal tests, and thus it only contributed to leadtime and testing costs. Mazda was the only company to provide data to support its conclusion. Mazda provided the results of a single test which showed lower readings in the angular than the frontal crash.

GM and Saab opposed the deletion of the oblique test. GM, in further discussions with NHTSA, based its objection on the belief that the oblique test is more representative of real world

crashes than the frontal test. GM also said that regardless of the agency's decision it would continue to conduct oblique tests; thus, although it believed such tests to be more representative it has no objection to their being deleted from the standard. Saab, in subsequent discussion with NHTSA, did not elaborate on their assertion that deletion of the test would be a "cover-up" for airbag deficiencies nor did VW, when contacted by NHTSA, explain why they believed the test necessary for airbags but not automatic belts.

The Department continues to believe, as expressed in the SNPRM, that the oblique test requirement may not meet the need for motor vehicle safety and thus may unnecessarily add to compliance costs. However, prior to taking final action the Department wishes to have additional test data and/or supporting and dissenting arguments. This information will be sought as part of the notice described earlier, as will comments from the public on the issue of international harmonization of test requirements, as sought by Peugeot and Renault.

Other Test Procedure Issues

The Department still believes that adoption of the NCAP test procedures will reduce test result variability. The added specificity of these procedures, as compared to the current FMVSS 208 compliance criteria, can have no other effect than to reduce variability compared to inconsistent dummy placement, albeit by some unknown amount.

However, we also agree with manufacturer comments concerning the inadequacy of notice as to the specific parts of the NCAP procedure to be adopted. In addition, several commenters suggested other test procedure changes to even further reduce variability. The soon to be issued NPRM will thus repropose the specific NCAP procedures to be adopted, plus propose additional changes as suggested in comments to Notice 35 of Docket 74-14.

Ford, Chrysler, and VW suggested that if automatic belts are the means of compliance, then the static test requirements of FMVSS 209 and 210, instead of the dynamic test requirements of FMVSS 208, be used to check compliance. The Department disagrees. The concept behind FMVSS 208 is that it is an overall vehicle standard, not just a restraint standard. To simply test the restraint system, statically, would not assure the occupant that injury protection, equivalent to that of other types of restraints which would continue to have to be dynamically tested, was being provided. In this regard, the Department agrees with Allstate that dynamic testing (as is also done for child restraint systems as required by FMVSS 213) is superior to static testing and the requests cited above are responded to in the negative.

The Department also rejects GM's proposal to amend FMVSS 208 by permitting compliance with manual belts if the vehicle complies with the injury criteria at 30 mph with the dummies belted and at 25 mph with the dummies unbelted. The Department does not believe, based on data in its possession on crash tests at 25 mph with unrestrained dummies, that equivalent safety benefits are possible with this proposal. GM's estimate of benefits is not complete in that it is based on vehicles in NHTSA's NCSS file, vehicles which, on average, are of early 1970's vintage. A more complete analysis would be based on the ability of *current* production vehicles to supply such protection. Data available to NHTSA indicate that some current vehicles are capable of supplying automatic occupant protection at speeds up to 25 mph. Without data to the contrary, there is no assurance of the magnitude of safety improvement associated with the GM proposal. Since it has not been demonstrated as an equal alternative, it will not be further considered in this rulemaking, although the Department applauds GM for its work in the area of passive interiors and encourages both it and other companies to continue to provide protection for otherwise unprotected occupants. The Department also notes that nothing in FMVSS 208 precludes compliance through the use of "passive interiors" as being developed by GM. But such compliance must be demonstrated at 30 mph, not 25 mph as GM has suggested.

Finally, Ford requested that convertibles be exempted from the automatic occupant protection requirements. Ford argues that automatic belts are not feasible in convertibles and that the only means of compliance would be with airbags, thus resulting in a "design" standard for these vehicles. Since the statute requires that safety standards be "appropriate for the class of vehicles to which they apply," and since convertibles are already exempt from the requirement that all front outboard seating positions have lap and shoulder belts, Ford argues that exemption for convertibles is appropriate. Although we disagree with Ford that providing automatic belts in convertibles is not feasible, it may be not acceptable or appropriate to do so. NHTSA will seek additional guidance from the public on this issue in subsequent rulemaking.

VII. Regulatory Impacts

The Department has considered the impacts of this final rule and determined that it is a major rulemaking within the meaning of E.O. 12291 and a significant rule within the meaning of the Department of Transportation Regulatory Policies and Procedures. A Final Regulatory Impact Analysis is being placed in the public docket simultaneously with the publication of this notice. A copy of the Analysis may be obtained by writing to: National Highway Traffic Safety Administration, Docket Section, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590.

The Department's determination that the rule is major and significant is based on the substantial benefits and costs resulting from the requirement for the installation of automatic protection systems. The Department's determinations regarding these matters are discussed elsewhere in this preamble. As noted above, the number of lives saved and injuries prevented will depend on the type of automatic restraints installed in new cars and on the usage and effectiveness of those restraints. Estimates range from 520 to 9,110 lives saved, 8,740 to 155,030 moderate to critical 2-5 injuries prevented and 22,760 to 255,770 minor injuries prevented. The total incremental cost increase for a new car would be $51 for automatic belt cars (incremental cost of $40 and lifetime energy costs of $11), $232 for a high volume of cars with driver position airbags (incremental cost of $220 and energy costs of $12), and $364 for a high volume of cars with airbags for all front seat occupants (incremental cost of $320 and energy costs of $44). Assuming 10 million cars sold annually, total economic costs, exclusive of insurance or other savings, would be between $510 million and $3,640 million.

The Department has also assessed the impacts of this final rule on car manufacturers, automatic restraint suppliers, new car dealers, and small organizations and governmental units. Based on that assessment, I certify that this action will not have a significant economic effect on a substantial number of small entities. Accordingly, the Department has not prepared a final regulatory flexibility analysis. However, the impacts of the final rule on suppliers, dealers and other entities are discussed in the FRIA.

The impact on airbag manufacturers is not likely to be significant, but will be positive. The final rule does not require

any car manufacturer to install airbags in any new cars. To the extent that car manufacturers respond to the incentive provided by this final rule to install airbags, airbags sales will increase. The Department is not able to assess precisely the extent to which car manufacturers will so respond.

Similarly, the suppliers of automatic belts are not likely to be significantly affected. These are generally the same firms that currently supply manual belts. Therefore, their volume of sales is not expected to increase significantly as a result of this final rule. There may be some economic benefits associated with developing and producing the more sophisticated types of automatic belts.

Since the Department anticipates that most car manufacturers will comply with the final rule by installing detachable automatic belts, the cost impacts on new cars will not be large enough to have a significant effect on new car sales. Similarly, the Department does not expect that the design or operation of the automatic restraints will affect new car sales. The Department expects that the detachable automatic belts will be sufficiently acceptable to the public so that their presence in new cars will not be a factor in the purchasing of new cars.

For the reasons discussed in the preceding paragraph, the Department does not expect that small organizations or governmental units would be significantly affected. The price increases associated with the installation of detachable automatic belts should not affect the purchasing of new cars by these entities. A somewhat greater effect would occur to the extent that any of these entities decide to purchase airbag cars.

In accordance with the National Environmental Policy Act of 1969, the Department has considered the environmental impacts of this final rule. A Final Environmental Impact Statement (FEIS) is being placed in the public docket simultaneously with the publication of this notice. The FEIS focuses on the environmental impacts associated with the alternative having the largest potential impacts. The alternative incorporated in this final rule will have substantially smaller impacts. The Department has concluded that there is no significant effect on the environment. Since most automatic restraints will be automatic belts, the amount of safety belt webbing manufactured should not change significantly.

The Department finds good cause for making this final rule efffective more than one year from the date of issuance, since the possibility exists that a substantial number of cars would comply with other than belt systems. As discussed earlier in this preamble and in the FRIA, the provision of automatic restraints requires significant vehicle modification. Airbag installation requires steering column changes and instrument panel redesign. The lead time to accomplish these alternatives, based on the time necessary to design and test the structural changes and to order tooling, especially for small cars, is several years. Similarly, a multi-year leadtime is necessary to provide automatic belts due to structural changes in seat and door strength and floor pan reinforcements. Passive interiors can require even longer leadtimes if structural modifications to a vehicle's front end, to better absorb the energy of a 30 mph crash, are necessary. The leadtime provided will provide car manufacturers with an effective choice about the type of automatic restraint they install in their cars. Providing less leadtime would limit their choices and tend to necessitate their selecting detachable automatic belts, the means of compliance with the least certainty as to level of benefits, in place of more advanced technology such as airbags or passive interiors.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Occupant crash protection.

VIII. The Rule

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection*, (49 CFR 571.208), is amended as set forth below.

§ 571.208 [Amended]

S4.1.2 through S4.1.2.2 of Standard No. 208 are revised to read as follows:

* * * * *

S4.1.2 *Passenger cars manufactured on or after September 1, 1973, and before September 1, 1986.* Each passenger car manufactured on or after September 1, 1973, and after September 1, 1986, shall meet the requirements of S4.1.2.1, S4.1.2.2 or S4.1.2.3. A protection system that meets the requirements of S4.1.2.1 or S4.1.2.2 may be installed at one or more designated seating positions of a vehicle that otherwise meets the requirements of S4.1.2.3.

S4.1.2.1 *First option—frontal/angular automatic protection system. The vehicle shall:*

(a) At each front outboard designated seating position meet the frontal crash protection requirements of S5.1 by means that require no action by vehicle occupants;

(b) At the front center designated seating position and at each rear designated seating position have a Type 1 or Type 2 seat belt assembly that conforms to Standard No. 209 and to S7.1 and S7.2; and

(c) *Either.* (1) Meet the lateral crash protection requirements of S5.2 and the rollover crash protection requirements of S5.3 by means that require no action by vehicle occupants; or

(2) At each front outboard designated seating position have a Type 1 or Type 2 seat belt assembly that conforms to Standard No. 209 and S7.1 through S7.3, and that meets the requirements of S5.1 with front test dummies as required by S5.1, restrained by the Type 1 or Type 2 seat belt assembly (or the pelvic portion of any Type 2 seat belt assembly which has a detachable upper torso belt) in addition to the means that require no action by the vehicle occupant.

S4.1.2.2 *Second option—head-on automatic protection system.* The vehicle shall—

(a) At each designated seating position have a Type 1 seat belt assembly or Type 2 seat belt assembly with a detachable upper torso portion that conforms to S7.1 and S7.2 of this standard.

(b) At each front outbord designated seating position, meet the frontal crash protecton requirements of S5.1, in a perpendicular impact, by means that require no action by vehicle occupants;

(c) At each front outboard designated seating position, meet the frontal crash protection requirements of S5.1, in a perpendicular impact, with a test device restrained by a Type 1 seat belt assembly; and

(d) At each front outboard designated seating position, have a seat belt warning system that conforms to S7.3

2. S4.1.3 of Standard No. 208 is revised to read as follows:

S4.1.3 *Passenger cars manufactured on or after September 1, 1986, and before September 1, 1989.*

S4.1.3.1 *Passenger cars manufactured on or after September 1, 1986, and before September 1, 1987.*

S4.1.3.1.1 Subject to S4.1.3.1.2 and S4.1.3.4, each passenger car manufactured on or after September 1, 1986, and before September 1, 1987, shall comply with the requirements of S4.1.2.1, S4.1.2.2 or S4.1.2.3.

S4.1.3.1.2 Subject to S4.1.5, an amount of the cars specified in S4.1.3.1.1 equal to not less than 10 percent of the average annual production of passenger cars manufactured on or after September 1, 1983, and before

September 1, 1986, by each manufacturer, shall comply with the requirements of S4.1.2.1.

S4.1.3.2 *Passenger cars manufactured on or after September 1, 1987, and before September 1, 1988.*

S4.1.3.2.1 Subject to S4.1.3.2.2 and S4.1.3.4, each passenger car manufactured on or after September 1, 1987, and before September 1, 1988, shall comply with the requirements of S4.1.2.1, S4.1.2.2 or S4.1.2.3.

S4.1.3.2.2 Subject to S4.1.5, an amount of the cars specified in S4.1.3.2.1 equal to not less than 25 percent of the average annual production of passenger cars manufactured on or after September 1, 1984, and before September 1, 1987, by each manufacturer, shall comply with the requirements of S4.1.2.1.

S4.1.3.3 *Passenger cars manufactured on or after September 1, 1988, and before September 1, 1989.*

S4.1.3.3.1 Subject to S4.1.3.3.2 and S4.1.3.4, each passenger car manufactured on or after September 1, 1988, and before September 1, 1989, shall comply with the requirements of S4.1.2.1, S4.1.2.2 or S4.1.2.3.

S4.1.3.3.2 Subject to S4.1.5, an amount of the cars specified in S4.1.3.3.1 equal to not less than 40 percent of the average annual production of passenger cars manufactured on or after September 1, 1985, and before September 1, 1988, by each manufacturer, shall comply with the requirements of S4.1.2.1.

S4.1.3.4 For the purposes of calculating the numbers of cars manufactured under S4.1.3.1.2, S4.1.3.2.2 or S4.1.3.3.2 to comply with S4.1.2.1, each car whose driver's seating position will comply with these requirements by means other than any type of seat belt is counted as 1.5 vehicles.

3. Standard No. 208 is amended by adding the following new sections:

S4.1.4 *Passenger cars manufactured on or after September 1, 1989.* Except as provided in S4.1.5, each passenger car manufactured on or after September 1, 1989, shall comply with the requirements of S4.1.2.1.

S4.1.5 *Mandatory seatbelt use laws.*

S4.1.5.1 If the Secretary of Transportation determines, by not later than April 1, 1989, that state mandatory safety belt usage laws have been enacted that meet the criteria specified in S4.1.5.2 and that are applicable to not less than two-thirds of the total population of the 50 states and the District of Columbia (based on the most recent Estimates of the Resident Population of States, by Age, Current Population Reports, Series P-25, Bureau of the Census), each passenger car manufactured under S4.1.3 or S4.1.4 on or after the date of that determination shall comply with the requirements of S4.1.2.1, S4.1.2.2. or S4.1.2.3.

S4.1.5.2 The minimum criteria for state mandatory safety belt usage laws are:

(a) Require that each front seat occupant of a passenger car equipped with safety belts under Standard No. 208 has a safety belt properly fastened about his or her body at all times when the vehicle is in forward motion.

(b) If waivers from the safety belt usage requirement are to be provided, permit them for medical reasons only.

(c) Provide for the following enforcement measures:

(1) A penalty of not less than $25.00 (which may include court costs) for each occupant of a car who violates the belt usage requirement.

(2) A provision specifying that the violation of the belt usage requirement may be used to mitigate damages with respect to any person who is involved in a passenger car accident while violating the belt usage requirement and who seeks in any subsequent litigation to recover damages for injuries resulting from the accident. This requirement is satisfied if there is a rule of law in the State permitting such mitigation.

(3) A program to encourage compliance with the belt usage requirement.

(d) An effective date of not later than September 1, 1989.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407)

Issued: July 11, 1984.

Elizabeth H. Dole,

Secretary of Transportation.

[FR Doc. 84-18689 Filed 7-11-84; 12:22 pm]

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Federal Register

Tuesday
July 17, 1984

Part III

Department of the Interior

Bureau of Land Management

43 CFR Part 2710

Sales—Federal Land Policy and Management Act; Amendment to the Sales Regulations; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2710

[Circular No. 2548]

Sales—Federal Land Policy and Management Act; Amendment to the Sales Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the existing sales regulations to simplify the procedures for disposal of public lands. The amendment removes redundant or unnecessary requirements; changes the terms for payment for public lands; and provides for more streamlined and efficient procedures.

EFFECTIVE DATE: August 16, 1984.

ADDRESS: Any inquiries or suggestions should be sent to: Director (320), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Ben Koski, (202) 343-8693.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published in the Federal Register on December 6, 1983 (48 FR 54656), with a 60-day comment period. Comments were received from 36 sources, 10 from associations, 10 from Federal agencies, 7 from individuals, 6 from businesses and 3 from State and local governments. Generally, the comments supported the proposed rulemaking and its aims, but objections were raised to specific sections. Several of the comments supported the streamlining and expressed the view that this made the regulations easier to understand and use. The major concern raised in the comments dealt with land use planning as it related to sales of public lands.

The largest number of comments were directed at the land use planning process as it applies to the identification of public lands that are suitable for disposal by sale or other means. Most of the comments expressed concern regarding: Disposal prioritization, (e.g., sale v. exchange); environmental assessment; public participation in the land use planning process; physical suitability; State/local government participation; planning amendments; and the land sale nomination process.

A cornerstone of the land use planning process as set forth in the land use planning regulations in 43 CFR Part 1600 is the role public participation, including State and local participation, plays in the identification and development of multiple use management planning decisions. This active participation is specifically provided for in 43 CFR 1610.2 and 1610.3 and has been extremely successful in identifying public and governmental needs in the land sale and conveyance elements of Resource Management Plans.

A number of comments objected to the public nomination process for the identification of lands suitable for sale contained in the proposed rulemaking because the comments were of the view that it bypassed the Bureau of Land Management's land use planning process. The existing sales regulations specifically state in §§ 2711.0-6(a) and 2711.1-1(a) that sales of public lands must be made in accordance with the land use planning regulations in Part 1600. This requirement applies to sales that result from the public nomination process. Public nominations will be examined either as part of the preparation of a land use plan or as part of an amendment to a land use plan. Since it is clear that any public nominations of lands for disposal must conform to the Bureau's land use planning process before those lands can be disposed of, the final rulemaking retains this provision.

Some of the comments expressed a concern that full consideration might not be given to alternative forms of disposal, such as exchanges or conveyance under the Recreation and Public Purposes Act. The land use planning process and the public participation that it requires will be the basis of determining the best method of disposal. As an example, if the land use planning process demonstrates a need for public lands for public purposes within the planning area, the lands designated in the plan for disposal would probably be conveyed under the provisions of the Recreation and Public Purposes Act. Further, all land conveyances, whatever the conveyance method used, must be consistent with State and local planning and zoning requirements.

A few comments expressed the concern that lands nominated for sale under the public nominations process might not be adequately reviewed for their environmental impacts. The environmental impacts resulting from the disposal of public lands are required to be fully addressed as part of the Bureau of Land Management's land use planning process. As explained above in this preamble, all lands nominated by the public for disposal must be considered under the Bureau's land use planning process before they can actually be offered for disposal, a process that includes a full analysis of the environmental impacts of such a disposal.

Although not affected by the proposed rulemaking, several of the comments supported the continuation of public benefit discount conveyances. This highly successful initiative will continue under other statutes and existing regulations and is unaffected by this final rulemaking.

Section 2710.0-5—Definitions

The three definitions that were added to the existing regulations by the proposed rulemaking were the subject of several comments. Since these terms are in common use and are commonly understood by the public, they are deemed unnecessary and have been deleted by the final rulemaking.

Section 2710.0-6—Policy

Several comments were received on § 2710.0-6(b) of the proposed rulemaking, with many of them objecting to the provision allowing public nomination of public lands for sale. Those making this comment suggested that it provided a method of subverting the Bureau of Land Management's land use planning procedure. As pointed out earlier in this preamble, any public lands offered for sale must be included in a land use plan or amendment to a land use plan. Moreover, public nominations are but one form of public participation in the decisionmaking process. Since public lands are offered for sale only upon the motion of the Bureau, the authorized officer can reject any public nomination that does not meet the requirements of the sales regulations and which is not consistent with an existing land use plan or an amendment to an existing land use plan. No change has been made in § 2710.0-6(b) by the final rulemaking.

Several comments were received on § 2710.0-6(c) of the proposed rulemaking, with most making suggested editorial changes to clarify its provisions. This section of the final rulemaking has adopted several of these suggested changes, including the substitution of the word "may" for the word "shall" in subparagraph (3)(i) to make it consistent with other sections of the existing regulations that allow the authorized officer discretion in selecting the method of sale appropriate for each parcel.

Several comments were received regarding the language regarding appraisals added to § 2710.0-6(f) by the proposed rulemaking. Some of the comments supported the provision in the proposed rulemaking giving the authorized officer flexibility in

determining appraisal methods based on the complexity of the case, method of sale or other factors. Other comments indicated that the amendment gave too much discretion to the authorized officer and that this could have an adverse impact on the fair market value determination for the public lands offered for sale. The change made by the proposed rulemaking was not intended to have any impact on the fair market value determination. The Federal Land Policy and Management Act and the regulations are clear in their requirement that the United States receive fair market value for any public lands that are sold. The amendment in the proposed rulemaking was designed to allow the authorized officer discretion to consult with an appraiser to determine the level of detail needed to determine the fair market value for the parcel in question. The amendment was never intended to give the authorized officer license to change the procedure for determining the fair market value of the lands offered for sale. The final rulemaking deletes this provision of the proposed rulemaking, leaving the language of the existing regulation in effect. Appraisal reports will be prepared using the principles of the "Uniform Appraisal Standards for Federal Land Acquisitions."

Section 2711.1-2—Notice of Realty Action

Section 2711.1-2(d) of the proposed rulemaking has been revised by the final rulemaking by substituting the word "shall" for the word "may" to make it clear that public lands offered for sale will be segregated from entry under the public land laws. Other changes to this section made by the final rulemaking are for clarity.

Several comments objected to the provision in this section of the proposed rulemaking that would allow a planning decision announcement to be substituted for the notice of realty action. The change was proposed to avoid duplication of sales notices in certain situations. The final rulemaking adopts the language of the proposed rulemaking for several reasons. Amendments to a land use plan covering the disposal of public lands will, in most instances, deal with a specific parcel of public lands and will make a thorough analysis of each specific sales proposal. It is duplicative and an additional expense to the United States and its taxpayers to republish that information in the form of a notice of realty action. In those instances where the Bureau of Land Management is prepared to implement the planning decision and proceed with the sale of the public lands, it is unnecessary to solicit public comments twice on the same action. When the planning decision announcement is used to give notice of a sale of public lands, the 45-day public comment period and 60-day Congressional notification required with a notice of realty action will be provided, even though the planning decision announcement requires only a 30-day comment period.

A few comments were received on section 2710.1-2 of the existing regulations that were not related to the changes made by the proposed rulemaking. One comment suggested that the patent for public lands sold under Part 2710 contain a provision requiring that existing land uses be continued. If the analysis of the public lands being considered for disposal by sale reveals that current land uses should be maintained to protect significant resources, the public lands will be retained in Federal ownership. Another comment on this section indicated a preference for oral bidding. The system of bidding should not be confused with the method of sale. The bidding system which best serves the purpose of the particular sale will be used. Finally, a comment suggested that signs be placed on public lands which are offered for sale. This very useful marketing technique will be considered for use in those instances where it would be appropriate.

Section 2711.1-3—Sales Requiring Grazing Permit or Lease Cancellation

The change made by the proposed rulemaking to § 2711.1-3 was generally supported by the comments, but there were requests for clarification. A careful review was made of the comments and the language of the proposed rulemaking and a decision was made to modify the language of the section in the final rulemaking to avoid confusion and provide consistency with other sections of Title 43 of the Code of Federal Regulations by using a cross-reference to the newly effective provisions in 43 CFR 4110.4-2(b).

Section 2711.3-1—Competitive Bidding

Several comments expressed full support for the variable bid deposit percentage (10 to 30 percent of the amount of the bid) and the 180-day period allowed a successful bidder to submit the remainder of the full bid price provided in this section of the proposed rulemaking. A group of comments expressed the view that the proposed changes favored large corporations or large economic units over individuals. Three comments stated that the lowering of the bid deposit and the extension of the settlement period to 180 days would enable large economic units to reinvest money that really belongs to the United States, whereas smaller units could not do this because of cash flow problems. Another comment suggested that the proposed changes would result in increased administrative costs to the United States. One comment proposed that some type of financial assistance be offered to buyers. Still another comment suggested that the final rulemaking should be amended to require a variable down payment of 15 to 25 percent and a payment period of three years, because this would be more beneficial to potential purchasers.

After a careful review of the comments on this section of the proposed rulemaking, a decision was made to have the final rulemaking retain the 10 to 30 percent bid deposit and allow up to 180 days in which to complete the sale transaction. This provision affords flexibility to vary the bid deposit percentage based on the total purchase price of the specific parcel being offered, while allowing equity considerations for all potential purchasers and prevailing market conditions. The 180-day period provided in the final rulemaking should allow sufficient time for a purchaser to obtain the funds needed to complete the purchase. Experience indicated that the 30-day period provided in the existing regulations had been constraining and the increased time period will afford greater latitude in arranging for financing which will benefit all potential purchasers. Long term financing, on the other hand, is more properly a role for the private sector. The administrative costs of the Bureau should be no different as a result of this change and might decrease if the number of parcels sold increases. Finally, paragraph (c) has been clarified in the final rulemaking.

Section 2711.3-2—Modified Bidding and Section 2711.3-3—Direct Sales

Many of the comments combined their view on these two sections of the proposed rulemaking and this preamble follows that lead in its dicussion of the two sections. Several questions were asked regarding the process for selection of a method of sale. The practice of the Bureau of Land Management is to select one of three methods of sale, either competitive, modified competitive or direct sale, after the parcel has been found suitable for disposal in the land use plan and after the parcel has been found to meet at least one of the criteria for sale

identified in section 203 of the Federal Land Policy and Management Act. The criteria to be used in determining which method of sale is to be used are contained in the proposed and final rulemaking. The selection of the appropriate method of sale will be based on those criteria.

Some of the comments on these sections of the proposed rulemaking suggested that the final rulemaking give preference rights to adjacent landowners or other interested parties. Other comments suggested that all sales of public lands be competitive. All of these questions will be given careful consideration by the authorized officer prior to the issuance of a notice of realty action on a specific parcel of public lands. The authorized officer's decision will be reflected in the notice of realty action and will specify the method of sale and who, if anyone, will be given a preference right for the sale.

Section 2711.3-2(f) of the proposed rulemaking has been eliminated by the final rulemaking because the language of the existing regulation, when coupled with changes made in other sections of the final rulemaking, have made it unnecessary.

Section 2711.5-3—Notice of Conveyance

A few of the comments on this section of the proposed rulemaking objected to the removal of the requirement to publish a Notice of Conveyance, stating that it would place a burden on the public. The existing regulations presently require a Federal Register notice and notice to the appropriate Governor and local officials when public lands are sold. After careful review of the comments and the existing procedures, it has been determined that the presently required Federal Register publication is an expensive, and largely unnecessary step, when considered in light of the publication of the proposed sale, pre- and post-sale publicity and required notification to State and local officials of all sales of public lands. In addition, reports of sales of public lands are available upon request and are published annually in the *Public Lands Statistics*, which is available to the public. As a result of this analysis, the final rulemaking has modified the proposed rulemaking and does not eliminate the entire section, but only eliminates the required publication of the Federal Register notice, leaving in place the requirement for notification to the appropriate Governor and local officials.

Editorial and grammatical corrections as needed have been made.

The principal author of this final rulemaking is Ben Koski, Division of Lands, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and 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.).

The changes made by this final rulemaking are minor in nature and have equal impact on all parties seeking to purchase public lands. The provision allowing an extension of time for the payment of the full purchase price should benefit small businesses and small governmental entities by giving them additional time to obtain the financing they need to purchase public lands. The benefit will not have a major effect on those entities.

This final rulemaking contains no information collection requirements requiring approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 2710

Administrative practice and procedure, Grazing lands, Public lands—mineral resources, Public lands—sale.

Under the authority of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713), Part 2710, Group 2700, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: June 18, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

PART 2710—[AMENDED]

§ 2710.0-6 [Amended]

2. Section 2710.0-6 is amended by:

a. Amending paragraph (b) by adding at the end thereof the sentence "Nominations or requests to have specific tracts of public lands offered for sale may also be made by direct request to the authorized officer."

b. Revising paragraph (c) to read:

* * * * *

(c)(1) The Federal Land Policy and Management Act (43 U.S.C. 1713(f)) provides that sales of public lands under this section shall be conducted under competitive bidding procedures established by the Secretary. However, where the Secretary determines it necessary and proper in order to assure equitable distribution among purchasers of lands, or to recognize equitable considerations or public policies, including but not limited to, a preference to users, may be sold by modified competitive bidding or without competitive bidding. In recognizing public policies, the Secretary shall give consideration to the following potential purchasers:

(i) The State in which the lands are located;

(ii) The local government entities in such State which are in vicinity of the lands;

(iii) Adjoining landowners;

(iv) Individuals; and

(v) Any other person.

(2) When a parcel of land meets the sale criteria of section 203 of the Federal Land Policy and Management Act (43 U.S.C. 1713), several factors shall be considered in determining the method of sale. These factors include, but are not limited to; competitive interest; needs of State and local governments; adjoining landowners; historical uses; and equitable distribution of land ownership.

(3) Three methods of sale are provided for in § 2711.3 of this title; competitive; modified competitive; and direct (non-competitive). The policy for selecting the method of sale is:

(i) Competitive sale as provided in § 2711.3-1 of this title is the general procedure for sales of public lands and may be used where there would be a number of interested parties bidding for the lands and (A) wherever in the judgment of the authorized officer the lands are accessible and usable regardless of adjoining land ownership and (B) wherever the lands are within a developing or urbanizing area and land values are increasing due to their location and interest on the competitive market.

(ii) Modified competitive sales as provided in § 2711.3-2 of this title may be used to permit the existing grazing user or adjoining landowner to meet the high bid at the public sale. This procedure will allow for limited competitive sales to protect on-going uses, to assure compatibility of the possible uses with adjacent lands, and avoid dislocation of existing users. Lands offered under this procedure would normally be public lands not located near urban expansion areas, or with rapidly increasing land values, and existing use of adjacent lands would be jeopardized by sale under competitive bidding procedures.

(iii) Direct sale as provided in § 2711.3-3 of this title may be used when the lands offered for sale are completely surrounded by lands in one ownership with no public access, or where the lands are needed by State or local governments or non-profit corporations,

or where necessary to protect existing equities in the lands or resolve inadvertent unauthorized use or occupancy of said lands.

(4) When lands have been offered for sale by one method of sale and the lands remain unsold, then the lands may be reoffered by another method of sale.

(5) In no case shall lands be sold for less than fair market value."

* * * * *

§ 2711.1-1 [Amended]

3. Section 2711.1-1 is amended by adding a new paragraph (c) to read:

* * * * *

(c) Nominations or requests for sales of public lands may be made to the District office of the Bureau of Land Management for the District in which the public lands are located and shall specifically identify the tract being nominated or requested and the reason for proposing sale of the specific tract.

§ 2711.1-2 [Amended]

4. Section 2711.1-2 is amended by:

a. Revising paragraph (b) to read:

* * * * *

(b) Not less than 60 days prior to sale, notice shall be sent to the Member of the United States House of Representatives in whose district the public lands proposed for sale are located and the United States Senators for the State in which the public lands proposed for sale are located, the Senate and House of Representatives, as required by paragraph (f) of this section, to Governor of the State within which the public lands are located, to the head of the governing body of any political subdivision having zoning or other land use regulatory responsibility in the geographic area within which the public lands are located and to the head of any political subdivision having administrative or public services responsibility in the geographic area within which the lands are located. The notice shall be sent to other known interested parties of record including, but not limited to, adjoining landowners and current land users."; and

* * * * *

(b) Renumbering paragraph (d) as paragraph (f) and inserting new paragraphs (d) and (e) to read:

* * * * *

(d) The publication of the notice of realty action in the Federal Register shall segregate the public lands covered by the notice of realty action to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. Any subsequent application, shall not be accepted, shall not be considered as filed and shall be returned to the applicant, if the notice segregates the lands from the use applied for in the application. The segregative effect of the notice of realty action shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the Federal Register of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

(e) The notice published under § 1610.5 of this title may, if so designated in the notice and is the functional equivalent of a notice of realty action required by this section, serve as the notice of realty action required by paragraph (a) of this section and may segregate the public lands covered by the sale proposal to the same extent that they would have been segregated under a notice of realty action issued under paragraph (a) of this section.

5. Section 2711.1-3 is revised to read:

§ 2711.1-3 Sales requiring grazing permit or lease cancellations.

When lands are identified for disposal and such disposal will preclude livestock grazing, the sale shall not be made until the permittees and lessees are given 2 years prior notification, except in cases of emergency, that their grazing permit or grazing lease and grazing preference may be cancelled in accordance with § 4110.4-2(b) of this title. A sale may be made of such identified lands if the sale is conditioned upon continued grazing by the current permittee/lessee until such time as the current grazing permit or lease would have expired or terminated. A permittee or lessee may unconditionally waive the 2-year prior notification. The publication of a notice of realty action as provided in § 2711.1-2(c) of this title shall constitute notice to the grazing permittee or lessee if such notice has not been previously given.

§ 2711.2 [Amended]

6. Section 2711.2(b) is amended by removing the word "law" and replacing it with the word "laws".

§ 2711.3-1 [Amended]

7. Section 2711.3-1 is amended by:

a. Revising the title to read:

§ 2711.3-1 Competitive bidding.

* * * * *

b. Amending paragraph (c) by removing from the second sentence the phrase "not less than one-fifth" and replacing it with the phrase "the amount required in the notice of realty action which shall be not less than 10 percent or more than 30 percent"; and by removing from the beginning of the third sentence the word "of" and replacing it with the word "or"; also by removing from the third sentence the word "drawing" and replacing it with the words "supplemental biddings; and removing the last sentence and replacing it with a new sentence to read: "The designated high bidders shall be allowed oral or sealed bids as designated by the authorized officer."

c. Amending paragraph (d) by removing the phrase "30 days" and replacing it with the phrase "180 days" and by removing the word "30th" and replacing it with the word "180th".

§ 2711.3-2 [Amended]

8. Section 2711.3-2 is amended by:

a. Revising the title to read:

§ 2711.3-2 Modified bidding.

* * * * *

b. Amending paragraph (a)(1) by removing the period at the end of paragraph (ii) and replacing it with a semicolon and the word "or" and by adding a new paragraph (iii) to read:

* * * * *

(iii) Offering to designated bidders the right of first refusal to purchase the lands at fair market value. Failure to accept an offer to purchase the offered lands within the time specified by the authorized officer shall constitute a waiver of his preference consideration.;

* * * * *

c. Revising paragraph (b) to read:

* * * * *

(b) Where 2 or more designated bidders exercise preference consideration awarded by the authorized officer in accordance with paragraph (a)(1) of this section, such bidders shall be offered the opportunity to agree upon a division of the lands among themselves. In the absence of a written agreement, the preference right bidders shall be allowed to continue bidding to determine the high bidder.

* * * * *

d. Renumbering paragraphs (c) and (d) as paragraphs (d) and (e) and inserting a new paragraph (c) to read:

* * * * *

(c) Where designated bidders fail to exercise the preference consideration offered by the authorized officer in the allowed time, the sale shall proceed using the procedures specified in § 2711.3-1 of this title; and

* * * * *

9. A new § 2711.3-3 is added to read:

§ 2711.3-3 Direct sales.

(a) Direct sales (without competition) may be utilized, when in the opinion of the authorized officer, a competitive sale

is not appropriate and the public interest would best be served by a direct sale. Examples include, but are not limited to:

(a) A tract identified for transfer to State or local government or nonprofit organization; or

(2) A tract identified for sale that is an intergal part of a project or public importance and speculative bidding would jeopardize a timely completion and economic viability of the project; or

(3) There is a need to recognize an authorized use such as an existing business which could suffer a substantial economic loss if the tract were purchased by other than the authorized user; or

(4) The adjoining ownership pattern and access indicate a direct sale is appropriate; or

(5) A need to resolve inadvertent unauthorized use or occupancy of the lands.

(b) Once the authorized officer has determined that the lands will be offered by direct sale and such determination has been issued, published and sent in accordance with procedures of this part, payment shall be made by the same instruments as authorized in § 2711.3–1(c) of this title.

(c) Failure to accept an offer to purchase the offered lands within the time specified by the authorized officer shall constitute a waiver of this preference consideration.

(d) Acceptance or rejection of an offer to purchase the lands shall be in accordance with the procedures set forth in § 2711.3–1 (f) and (g) of this title.

§ 2711.5-3 [Amended]

10. Section 2711.5–3 is amended by removing the phrase "publish in the Federal Register and".

[FR Doc. 84-18877 Filed 7-16-84; 8:45 am]

BILLING CODE 4310-84-M

Federal Register

Tuesday
July 17, 1984

Part IV

Department of Education

34 CFR Part 614

College Housing Program; Final Regulations and Notice

DEPARTMENT OF EDUCATION

34 CFR Part 614

College Housing Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education issues final regulations governing an aspect of the College Housing Program. The regulations implement a recent amendment to the Housing Act of 1950 made by section 308 of Pub. L. 98-139, which authorizes the Secretary under certain conditions to grant a discount to institutions that prepay their college housing loans. These regulations provide a mathematical formula for computing a discounted prepayment of a college housing loan, and establish certain requirements that institutions must meet, if they wish to receive a discount.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: John K. Uchima, Program Manager, Loan Management Branch, U.S. Department of Education, L'Enfant Plaza, P.O. Box 23471, Washington, D.C. 20024. Telephone: (202) 472-9300.

SUPPLEMENTARY INFORMATION: The College Housing Program provides long-term, low-interest loans to colleges, universities, teaching hospitals, certain vocational/technical institutions and other eligible college housing agencies for construction, acquisition, or substantial rehabilitation of dormitories, faculty housing, and related facilities such as dining halls, student centers, and infirmaries.

The Housing Act of 1950 was recently amended by section 308 of Pub. L. 98-139 (the Department of Education Appropriation Act of 1984). This legislative measure allows the Secretary of Education to discount college housing loans under certain conditions. These conditions include the following:

(a) Prior to October 1, 1984, the borrower prepays the discounted outstanding loan amount;

(b) The discount is based on the yield on outstanding marketable obligations of the United States with maturities comparable to the remaining repayment schedule of the housing loan;

(c) The prepayment is made from non-Federal sources;

(d) The Secretary is assured by the borrower that the housing or other educational facility will be used for purposes related to the educational institution for the remaining term of the original loan; and

(e) The prepayment amount is in the best financial interests of the Federal Government.

On April 20, 1984, the Secretary published in the Federal Register, 49 FR 16932, a notice of proposed rulemaking for the College Housing program, which contained proposed regulations for implementing the discount authority granted to the Secretary by the Congress in section 308 of Pub. L. 98-139. In response to the proposed regulations, a number of comments were received by the Secretary, including comments from public officials, a college housing loan borrower, investment bankers, and financial advisors. In addition, during the public comment period, the House Subcommittee on Intergovernmental Operations and Human Resources held oversight hearings on the Department of Education's management of the College Housing Program. The Chairman of the subcommittee asked numerous questions about the proposed regulations, and, in particular, commented and inquired about the application of discount authority to institutions that are currently in default of their college housing loan payment obligations. (A copy of the Hearing Transcript is available for public inspection in Room 3671, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.)

Many of the comments received by the Secretary, including those arising from the subcommittee's hearings, called for assessments of financial and tax consequences to the Government, with respect to the manner in which the Secretary proposed to exercise the discount authority. For such assessments, the Secretary consulted with officials from the Office of Management and Budget and from the Department of the Treasury.

The Secretary is adopting most of the text of the proposed regulations as the final regulations for implementing the discount authority. Changes and additions from the proposed regulations have been incorporated into the final regulations based on comments received by the Secretary as well as the Secretary's internal review. The following is a summary of the comments and the Secretary's responses to them:

Comments and Responses

Comment

One commenter requested clarification on what constitutes an adequate assurance of educational use for a housing or other educational facility that was financed by a college housing loan which the institution proposes to prepay under the discount authority. In this connection, the commenter also raised the question of whether an institution which leases an educational facility would be in compliance with the educational use requirement.

Response

A change is made in the regulations. The regulations are amended to specify that the Secretary considers as a satisfactory assurance of educational use the placement of a restriction (through a covenant, or other form of use restriction) of educational use on the deed to the property originally financed by the loan, or the execution by the institution of a legally binding covenant to the Secretary that provides for the educational use restriction. In negotiating such covenants, the Secretary reserves the right to include a provision calling for recapture of the discount benefits for breach of the restriction.

The Secretary believes that it is necessary to specify requirements of educational use so that those institutions which have received a discount continue to use the facility in a manner consistent with the educational mission of the institution. Based on the Secretary's experience in administering the College Housing and Academic Facilities Programs, the Secretary is particularly concerned about institutions which use federally financed projects for noneducational uses and in contravention of their loan agreements. The Secretary interprets the discount authority granted by the Congress to authorize the Secretary to require legally binding assurances of educational use to prevent institutions from subsequently selling or leasing property for noneducational purposes.

The Secretary does, however, intend to take a broad view of what constitutes a permissible educational use; for instance, if an institution demonstrates that leasing the facility to a particular tenant contributes to the educational mission of the institution, the Secretary will approve the use as satisfying the statutory condition. Finally, the Secretary does not intend that regulatory requirements for the educational use restriction are

exhaustive of all forms by which an institution adequately assures the Secretary of its compliance with the restriction.

Comment

Another commenter on the educational use requirement recommended that the Secretary retain flexibility to relax the period during which the educational use requirement is in force for institutions.

Response

No change is made in the regulations. The Secretary does not possess authority to waive or compromise any aspect of the educational use requirement, including the time period during which the requirement is in force. The discount amendment requires that the educational use requirement be in force "for the original term of the loan." The legislative history indicates the Congress' concern "that educational institutions not retire loans simply to convert the facility's purpose to noneducational related purposes or sell them outright to other entities." However, the Secretay interprets the phrase "the original term of the loan" not to mean the period *originally* specified for loan repayments, but the remaining term of the original loan prior to an award of a discount. (S. Rept. 98-247 at 155).

Comment

One commenter stated that the proposed regulations were ambiguous on whether "the discounting of each payment to the prepayment date is intended to be at a rate appropriate to the last payment date or at a rate appropriate to the date of the particular payment being discounted."

Response

No change is made in the regulations. The Secretary believes that the text of the regulations and the present value formula as originally proposed called for discounting of each scheduled payment for a college housing loan at the interest rate certified by the Secretary of the Treasury, which rate would be applicable to the maturity date of the particular payment being discounted.

Comment

One commenter suggested that the Secretary, for purposes of computing discounted present value, use ⅛% more than the interest rates established weekly by the Department of the Treasury, Bureau of Public Debt for U.S. Treasury Certificates of Indebtedness, Notes and Bonds—State and Local Government Series (SLGs).

Response

No change is made in the regulations. For reasons of administrative convenience and necessity, the Secretary disagrees with this suggestion. The monthly interest rates that will be determined by the Treasury Department for use in calculating the discounted present value provide the Secretary with sufficient time to do the necessary computations and estimates. As the interest rates on SLGs vary from week to week, it would be administratively cumbersome to do computations and estimates for the volume of proposals the Secretary expects. In addition, the standard across the Government is the monthly rate.

Comment

One commenter suggested that the regulations not include a reamortization of all remaining payments of principal and interest because of the concern that such a reamortization "introduces an ambiguity into the process, as no formula or algorithm is provided."

Response

The Secretary agrees and the appropriate change is made in the regulations.

Comment

One commenter suggested that the Secretary require an institution to prepay its college housing loan based on the interest rates in force at the time that the institution has committed itself to prepay the loan and to submit its prepayment within a reasonable time, approximately thirty days, after expression of its commitment. Such a requirement would prevent undue speculation on market interest rates and preclude institutions from taking advantage of any unforeseen increases in interest rates that may not be accounted for in the interest rate certified monthly by the Department of the Treasury.

Response

The Secretary agrees and will include time limits for accepting prepayments in the notice for receipt of proposals for this program published elsewhere in this issue of the Federal Register.

Comment

One commenter recommended that the Secretary change the cutoff date of October 1, 1984 for accepting prepayments to a more realistic date in light of the difficulty that colleges might face in raising capital to finance prepayment.

Response

No change is made in the regulations. The amendment passed by the Congress for the discount authority requires that prepayment be made prior to October 1, 1984.

Comment

Another commenter recommended that the regulations as originally proposed be revised to clarify that a prepayment must be made before October 1, 1984, not that the Secretary may provide a discount prior to October 1, 1984.

Response

A change is made in the regulations. The Secretary agrees that the regulations should be clarified. As explained in a notice published elsewhere in this issue of the Federal Register, the Secretary may grant a discount after October 1, 1984 as long as a prepayment in full has been made prior to that date, also assuming other conditions are met by the borrower. While the amendment passed by Congress requires that prepayment of a college housing loan must be made prior to October 1, 1984, the amendment does *not* require that the Secretary award a discount prior to October 1, 1984.

It should be noted that prepayment in full does not, by itself, entitle an institution to a discount, but is merely one of several other conditions that must be satisfied for the Secretary to consider the award of a discount. For example, the Secretary must determine that the institution has prepaid from non-Federal sources of funds and that the discount is in the best financial interests of the Government. In addition, depending on the complexity of the proposals, particularly where multiple borrowers have multiple loans, and on the volume of proposals, it would be nearly impossible for the Secretary to award all discounts prior to October 1, 1984. Thus, based on the text of the amendment and administrative exigencies, the Secretary believes that the awarding of discounts to institutions after October 1, 1984 comports with the remedial nature of the statutory scheme provided prepayment and other stipulated conditions are met *before* October 1, 1984.

Comment

One commenter observed that the proposed regulations appeared to prevent the use of proceeds from tax exempt obligations for prepaying a college housing loan, although the program places a degree of reliance on State and local governments for some

financing. The commenter suggested procedures for allowing retirement and discount of the loans through the use of tax exempt financing.

Response

A change is made in the regulations. The change clarifies that tax exempt financing is not available to retire college housing loans. The Secretary is concerned about the use of proceeds from tax exempt obligations to retire college housing loans under the discount authority. Congress placed direct responsibility on the Secretary to ensure that an institution would not receive a discount under circumstances where the discount would not be in the best financial interests of the Federal Government. The statute vests broad discretion in the Secretary to carry out this responsibility.

The Secretary, throughout the rulemaking period, has received numerous inquiries from tax consultants, investment advisors, and investors concerning, among other things, private placement of tax exempt obligations, the proceeds from which would be used for retirement of college housing loans, and the leasing or sale-lease back arrangements between the holders of these privately placed obligations and the institution. Based on advice from the Treasury Department and the Office of Management and Budget, the Secretary has determined that the use of tax exempt financing for retirement of college housing loans at a discount through prepayment would not be in the best financial interests of the Government, particularly in light of the fact that such financing is, in effect, a Federal subsidy. Both OMB and the Treasury Department have advised that such financing would not be in the best financial interests of the Federal Government because of the revenue loss to the Treasury associated with such financing. The Secretary agrees and has placed a prohibition on such financing for prepayment discounts in the final regulations.

Comment

Two commenters raised questions about the wisdom of allowing institutions in default on their college housing loans to receive discounts for prepayment of those loans. In addition, these commenters sought more information and recommended specific policies for discounting loans of institutions currently in default of their loan obligations. Specifically, one commenter recommended that the discounted present value formula not apply to delinquency amounts.

Response

Changes have been made in the regulations. The Secretary has adopted special, separate procedures for evaluating proposals from institutions in default. Several new provisions in the regulations better inform the public and institutions in default about the separate evaluation that the Secretary conducts for such institutions and the factors the Secretary considers in reviewing proposals for prepayment discounts. These factors primarily pertain to the creditworthiness of, and risks associated with, institutions in default.

The Secretary believes that it is both necessary and appropriate for proposals from institutions in default to be reviewed and assessed separately from the proposals of non-defaulted institutions. Many institutions in default are currently under special repayment agreements with the Secretary, and, with the opportunity to receive a discount, many are in a financial position to cure past delinquencies. The Secretary believes that it would constitute a windfall to such institutions to allow them to receive a discount without requiring that they first cure amounts in delinquency. Also, discounting both past delinquencies and future payments would unfairly reward recalcitrant behavior, particularly where the institution has refused to become current on its loan after the Secretary has made a demand based on the institution's financial condition.

While the factors listed in the regulations are intended to ensure that institutions in default cure delinquencies before any consideration is given to an award of a discount, the Secretary retains authority under applicable legislation to grant financial relief by, for example, rescheduling loan payments or recasting the indebtedness for such institutions prior to approving a proposal for a prepayment discount. The Secretary does not intend to use that authority in connection with proposals for prepayment discounts from defaulted institutions, except in narrow and limited circumstances. If an institution in default demonstrates that it can cure some but not all delinquent amounts and has sufficient funds to retire projected scheduled payments by application of the present discounted value formula, the Secretary will consider extending financial relief to that institution prior to considering a prepayment discount. The Secretary has specified certain factors in the regulations to make such an assessment of extending relief dependent on an institution's creditworthiness and default risks. These factors are designed to ensure that financial relief is extended only in cases where it can be demonstrated that substantial future default risks would be posed by *not* approving a prepayment discount for a particular institution in default.

By specifying factors of creditworthiness and risks, the Secretary is providing notice to institutions in default that the Secretary intends to review each proposal and the institution's prior performance in the College Housing Program separately and to consider the financial condition of the institution before a determination is made on granting a prepayment discount.

The Secretary believes that this approach is consonant with the letter of the law and the legislative history surrounding the authority. The Senate Committee that proposed the discount amendment stated that, "in some instances institutions may not be financially capable of retirement at market value, and * * * it would be in the best financial interests of the Government to receive less than the fair market value rather than risk default in which little or no payment on the loan would be received." (S. Rept. 98-247 at 155.) In this connection, all judgments to provide such financial relief under these limited and narrow circumstances will be made on a case-by-case basis.

Other Changes

The Secretary is incorporating a number of minor technical and stylistic changes in the final regulations based on an internal review of the proposed regulations. In addition, the Secretary has added one substantive condition to the regulations that institutions must meet to receive a prepayment discount.

Based on the Secretary's experience in administering the College Housing and Academic Facilities Programs, the Secretary believes that the condition that institutions not use Federal funds for a prepayment discount deserves special enforcement attention with respect to institutions that have recently received college housing loans from the Secretary. As money is fungible, it would be virtually impossible to trace whether an institution which has recently received a college housing loan is using part of that Federal loan for making a prepayment in full on other college housing loans that it might have previously received or on that same loan.

Based on the Secretary's administration of the College Housing Program, the Secretary is aware that institutions that have received loans over the last few years may not have

expended all of these Federal funds and that there exists potential for abuse of the program by use of such funds for retirement of the very loan that has not been fully expended. To prevent this abuse from occurring, to ensure that Federal funds are not used in such a manner, and to ensure that the financial interests of the Government are best served, the Secretary may choose not to approve discounts for institutions which have had college housing loans issued after October 1, 1979. This determination will be made on a case-by-case basis.

Executive Order 12291

The regulations have been reviewed by the Department in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Intergovernmental Review

This Program is listed in other regulations promulgated by the Secretary (34 CFR Part 79) as subject to the intergovernmental review requirements imposed by section 204 of the Demonstration Cities and Metropolitan Development Act of 1966. The objective of these requirements and Executive Order 12372, which implements these requirements, is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program. However, the limited discount program offered by the Secretary is not subject to section 204 because no financial assistance for capital construction is awarded.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking the Secretary requested comments on whether the proposed regulations would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, the Secretary has determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 614

Colleges and universities, Education, Housing, Loan programs—housing and community development.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.142—College Housing Program)

Dated: July 12, 1984.

T.H. Bell,

Secretary of Education.

The Secretary of Education amends Part 614 of Title 34 of the Code of Federal Regulations as follows:

PART 614—COLLEGE HOUSING PROGRAM

1. Part 614 is revised by adding as new § 614.63 to read as follows:

§ 614.63 Discounted prepayment of a loan.

(a)(1) The Secretary may provide a discount for prepayment in full of a college housing loan in an amount determined to be in the best financial interests of the Government for institutions that meet the conditions established in paragraph (b).

(2) The discount is applicable both to loans in current payment status and to loans in default. The Secretary reviews proposals from institutions with defaulted loans separately from those in current payment status in order to provide institutions in default all possible guidance in accomplishing the prepayment of their college housing loans. In addition to assessing the conditions established in paragraph (b) of this section, the Secretary assesses proposals from institutions in default based on the following factors—

(i) The financial condition of the institution and the extent to which that condition establishes substantial future default risks on the college housing loan that the institution seeks to prepay;

(ii) The current ability and willingness of the institution to repay all past delinquent amounts of principal and interest prior to receiving a prepayment discount; and

(iii) The past efforts and willingness of the institution to repay past delinquent amounts.

(b) The Secretary may approve a proposal from an institution for discounted prepayment of a college housing loan if—

(1) The prepayment is made before October 1, 1984;

(2) The prepayment is made from non-Federal sources;

(3) Except as noted in paragraph (c) of this section, the prepayment is made on a loan issued before October 1, 1979;

(4) The prepayment is not derived from proceeds of obligations, the income of which is exempt from taxation under the Internal Revenue Code of 1954;

(5) The prepayment is in an amount computed in accordance with the formula set out in paragraph (d)(2) of this section; and

(6) The institution assures the Secretary that the housing or other educational facilities financed with the loan will continue to be used for educational purposes during the remaining term of the loan by—

(i) Promising to use the facilities for educational purposes and placing covenants on that use on the deed to the property; or

(ii) Executing an agreement with the Secretary that legally binds the institution to use the facilities for educational purposes.

(c) The Secretary considers a proposal from an institution for discounted prepayment on a loan issued on or after October 1, 1979 on a case-by-case basis.

(d)(1) The Secretary fixes the present (discounted) value of the remaining payments on a college housing loan by calculating a price on that loan which would, if the loan were purchased and held to maturity, produce a yield to the purchaser for the period from the date of purchase to the maturity of that loan equal to the interest rate determined by the Secretary. In taking into consideration current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to that of the loan to be prepaid, the Secretary applies the interest rate as certified monthly by the Secretary of the Treasury.

(2) The present value is computed by summing the present values of all remaining payments by using the following formula:

$$\text{Present value} = \sum_{k=1}^{n} \frac{P_k}{\left[\left(1 + \frac{d}{365} \times i_k\right)\right]\left[\left(1 + i_k\right)^{\frac{k-1}{2}}\right]}$$

Where

P_k=Total payment, including interest, due on the kth payment date following the prepayment date.

n=Total number of remaining payment dates.

d=Number of days from the prepayment date to the next scheduled payment date.

i_k=Treasury rate, in decimals, for the kth payment date.

(12 U.S.C. 1749a(c)(9); S. Rept. 98-247 at 155)

[FR Doc. 84-18379 Filed 7-16-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

Office Of Postsecondary Education

College Housing Program; Closing Date for Transmittal of Proposals for a Prepayment Discount Under the College Housing Program

Educational institutions that have outstanding college housing loans and that wish to apply for a prepayment discount under the College Housing Program are invited to submit a proposal for a discount to the Secretary of Education.

This program is authorized under Title IV of the Housing Act of 1950 (12 U.S.C. 1749–1749d). Under section 306 of the Department of Education Organization Act (Pub. L. 96–88), administration of the College Housing Program was transferred from the Secretary of Housing and Urban Development to the Secretary of Education (20 U.S.C. 3446). Section 308 of Pub. L. 98–139 (the Department of Education Appropriation Act of 1984) amended section 402(c) of the Housing Act to allow the Secretary to accept, prior to October 1, 1984, discounted prepayments on outstanding loans.

Closing Date for Transmittal of Proposals

Proposals must be mailed or hand delivered by August 16, 1984.

Proposals Delivered by Mail

A proposal sent by mail must be addressed to the U.S. Department of Education, Attention: Division of Grants and Loan Management, L'Enfant Plaza, P.O. Box 23471, Washington, D.C. 20034. An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping lable, invoice or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If a proposal is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

Institutions should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

Institutions are encouraged to use registered or at least first-class mail. Each late applicant will be notified that its proposal will not be considered.

Proposals Delivered by Hand

A proposal that is hand delivered must be taken to the U.S. Department of Education, Division of Grants and Loan Management, Room 3671, Regional Office Building 3, 7th and D streets SW., Washington, D.C. between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily except Saturday, Sunday or Federal Holidays. Proposals that are hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information

This limited inivitation is solely for prepayment of outstanding college housing loans. The applicable regulations specify requirements for prepayment of outstanding loans and for determining the actual amount that must be prepaid under a formula. The Secretary determines whether to award a discount based on these requirements, including the requirement that the discount be in the best financial interests of the Government.

Supplemental Information

There is no standard form for a proposal. However, a proposal for a prepayment discount should be submitted and signed by an authorized official of the institution, should reflect the information necessary for the Secretary to award a discount under the applicable regulations, and should also contain the following information—

- If the institution intends to use funds on deposit on reserve accounts that were established for the building originally financed by the loan or the loan itself, it must also request that the Department grant the institution permission to use such funds for prepayment;
- For loans that are evidenced by bonds issued under a trust indenture (or similar instrument), a statement that the trustee under the indenture (or similar instrument) has verified the outstanding balance of the loan to be discounted;
- The exact date the institution will submit its prepayment to the Secretary; and
- The construction project number for the loan and a description of the building financed by the loan.

The Department encourages each institution that proposes to submit a discounted prepayment for loans that are evidenced under a trust indenture (or similar instrument) to consult directly with the trustee institution with respect to the execution of appropriate forms for releasing or cancelling mortgages or liens that secure prepayment of the loan. In addition, to the extent that several loans are evidenced by the issuance of one bond under a trust indenture, an institution that wishes to prepay only one of the loans should seek the advice of the trustee as to the appropriate documents and forms for separating the loans for prepayment purposes. The Department anticipates that separating loans for prepayment purposes will necessitate the execution of collateral documents such as a supplemental to an indenture. All appropriate forms that a trustee might require the Department, as bondholder, to execute should be submitted with the proposal.

Each institution that submits a proposal should calculate the amount it must prepay under the formula reflected in the applicable regulations. The Department encourages prepayment directly to the Department of Treasury by electronic transfer but will accept prepayment by a certified check to the Federal Reserve Bank in Richmond, Virginia. Institutions are advised that full prepayment is required and that the prepayment must be made prior to October 1, 1984. No partial payments may be used to receive a prepayment discount under the legislation. Institutions that do not prepay in full or undercalculate the prepayment do so at the risk of rejection of the proposal. If time and resources permit, the Secretary notifies institutions that have submitted underpayments.

The Secretary reviews all prepayment calculations done by institutions. If an institution overcalculates and submits an overpayment, the overpaid amount will be returned to the institution unless the institution wishes the Secretary to apply the overpaid amount to other indebtedness to the Department. Once a proposal has been tentatively accepted, the Department will execute an agreement with the institution. The agreement would principally reiterate the statutory and regulatory requirements for a prepayment discount; however, it is possible that terms of the agreement may vary from institution to institution depending on the particular facts involved.

Applicable Regulations

The final regulations applicable to this program (34 CFR Part 614) are published in this issue of the Federal Register.

Intergovernmental Review

This program is listed in other regulations promulgated by the Secretary (34 CFR Part 79) as subject to intergovernmental review requirements imposed by section 204 of the

Demonstration Cities and Metropolitan Development Act of 1966. The objective of these requirements and Executive Order 12372, which implements these requirements, is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program. However, the limited discount program offered by the Secretary is not subject to section 204 because no financial assistance for capital construction is awarded.

Further Information

For further information contact John K. Uchima, Chief, Loan Management Branch, Division of Grants and Loan Management, Department of Education, P.O. Box 23471, Washington, D.C. 20034. Telephone: (202) 472-9300.

(Catalog of Federal Domestic Assistance No. 84.142, College Housing Program)

(12 U.S.C. 1749-1749d)

Dated: July 12, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84-18908 Filed 7-16-84; 8:45 am]

BILLING CODE 4000-01-M

Federal Register

Tuesday
July 17, 1984

Part V

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405, 431, 433, 456, 466, and 473

Medicare and Medicaid Programs; Utilization and Quality Control Peer Review Organization (PRO); Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 431, 433, 456, and 466

[HEQ-108-P]

Medicare and Medicaid Programs; Utilization and Quality Control Peer Review Organization (PRO); Assumption of Responsibilites and Medicare Review Functions and Coordination of Medicaid With Peer Review Organization

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposal would implement portions of the Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248) and the Social Security Act Amendments of 1983 (Pub. L 98-21) by establishing the review functions to be performed by a Utilization and Quality Control Peer Review Organization (PRO). The 1983 amendments to the Social Security Act amended TEFRA by requiring that effective October 1, 1983, hospitals receiving payment under the Medicare prospective payment system (PPS) are required to maintain an agreement with a PRO if there is one for the area. Effective October 1, 1984, hospitals are required to have an agreement with a PRO in order to receive Medicare payments. These proposed regulations outline the relationships among PROs, Medicare fiscal intermediaries and carriers, providers, practitioners, and beneficiaries upon the PRO's assumption of conduct of review for those hospitals under PPS and for all other facilities. The proposal would also describe the relationship between PROs and State Medicaid agencies that contract with PROs to perform review.

DATE: To assure consideration, comments should be received by August 16, 1984.

ADDRESS: Address comments in writing to: Health Care Financing Administration Department of Health and Human Services, Attention: HSQ-108-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309-G of the Department's office at 200 Independence Avenue SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FUTHER INFORMATION, CONTACT: Kay Terry, (301) 594-7910.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248) amended Part B of Title XI of the Social Security Act (Act) by establishing the Utilization and Quality Control Peer Review Organization (PRO) program. This program, when fully implemented, will replace the existing Professional Standards Review Organization (PSRO) program. PROs will assume responsibilities similar to those now exercised by PSROs for the review of health care services funded under Title XVIII of the Act (MEDICARE) to determine whether those services are reasonable, medically necessary, are furnished in the appropriate setting, and are of a quality which meet professionally recognized standards.

The original purpose of the PSRO program was to assure that health care services and items for which payment may be made in whole or part under the Medicare, Medicaid, and Maternal and Child Health and Crippled Children's programs were medically necessary, conformed to appropriate professional standards and were delivered in the most efficient and economical manner possible. The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) limited mandatory PSRO review to the Medicare program. The Peer Review Improvement Act of 1982 seeks to redirect, simplify, and enahance the effectiveness of peer review under Medicare.

The PRO program is similar to the PSRO program with the following important distinctions:

1. Under the PRO program, eligible organizations may be either for profit or nonprofit and may either be physician groups or non-physician groups which have available to them sufficient numbers of physicians to perform review (section 1152(1) of the Act). PSROs are required to be nonprofit organizations and to include and maintain within their membership, at least 25 percent of the area physicians, unless the Secretary designates an alternate organization as a PSRO.

2. The Secretary must consolidate the current PSRO areas into PRO areas using criteria specified in section 1153(a)(2) of the Act. This will greatly reduce the number of areas for review.

3. A PRO contract may not be awarded to an organization that is, or is affiliated with, a health care facility or association of facilities within the area served by the organization or which would be served by the organization if it entered into a PRO contract. Payor organizations (i.e., insurance companies or other organizations making payments to providers) may only be designated as a PRO after October 1, 1984, and then only if there is no other qualified non-payor organization willing to contract with HCFA. Under the PSRO program, these types of organizations qualify if they meet the requirements for designation as an "alternate PSRO".

4. Contracts between HCFA and PROs are for an initial period of two years and are renewable biennially (section 1153(c)(3) of the Act). PSROs receive annual grants.

5. Contracts between HCFA and PROs would be for the purpose of achieving specific results. These PRO contracts must specify objectives to be achieved over the contract period. The performance of the PRO will be evaluated primarily in terms of the accomplishment of those objectives (section 1153(c)(7) of the Act). The PSRO statute does not contain a similar provision.

6. Exclusions of practitioners or providers from the Medicare program for the provision of unnecessary or poor quality services will become effective automatically if the Secretary fails to act upon the PRO's sanction report and recommendation within 120 days after submission (sections 1156(a) and 1156(b)(1) of the Act). Under the PSRO program, the Secretary must act affirmatively in order for the sanction to take effect.

7. PSRO policies with regard to assumption and conduct of review would be adopted in the regulations for the PRO program, where appropriate. Other requirements will be included in the individual contracts between HCFA and the PRO.

8. Where a PSRO continues to operate, it will do so under current PSRO regulations until PROs are implemented for the area in which the PSRO is located.

9. PROs will make determinations as to whether limitation of liability (under section 1879 of the Act) is applicable.

Some elements of the PSRO program would not be included in the PRO program. For example:

1. We have determined that in no case can a facility conduct review (except quality review) effectively or efficiently because of the extreme conflict between review responsibilities and financial incentives that occurs when a hospital has the responsibility of determining whether the care it or another hospital has already provided or will provide is unnecessary or unreasonable, or is inappropriately provided in an acute level of care and payment is based on that determination. This situation exists both in the case of review of hospitals paid under the Medicare prospective payment system and when hospital review is conducted retrospectively in those hospitals not under the prospective payment system. Because of the pervasiveness of the prospective payment system and retrospective utilization review, we have determined that no PRO review may be delegated to a facility except for quality review.

2. The PRO statute does not require that norms, criteria and standards be approved by HCFA and the National Professional Standards Review Council. The statutory authority for the National Council has been eliminated. In addition, acceptable criteria are generally available for PRO use.

3. The PRO statute does not require that continued stay review be performed on a routine basis. Under the medicare prospective payment system for hospitals, this type of review will be applied only to those "outlier" days that exceed the number of days allotted by HCFA for the particular diagnosis-related group (DRG).

II. Statutory Provisions

PRO Contracts

Section 1153(a)(1) of the Act, as amended by TEFRA, requires the Secretary to establish geographic areas with respect to which PRO contracts will be awarded. Final regulations to designate PRO areas were published in the Federal Register on February 27, 1984 (48 FR 7202).

Section 1153(b)(1) of the Act specifies that the Secretary will enter into a contract with a PRO for each area established.

Section 1153(c)(1) of the Act specifies tht each contract with a PRO will require that the PRO perform certain functions itself or subcontract for the performance of all or some of those functions.

Section 1153(c)(2) provides the Secretary with the authority to evaluate the quality and effectiveness of the PRO in carrying out the functions specified in its contract.

Section 1153(c)(7) specifies that the PRO contract will include negotiated objectives against which the organization's performance will be judged.

PRO Functions

Section 1154(a)(1) of the Act requires that a PRO (in accordance with its contract with HCFA) review some or all of those services and items provided by physicians, other health care practitioners, providers, and suppliers. The PRO's review must be for the purpose of determining whether:

- The services and items are or were reasonable and medically necessary and meet specific Medicare coverage requirements;
- The quality of the services meets professionally recognized standards of health care; and
- Those services and items proposed to be provided on an inpatient basis in a hospital or other health care facility could, consistent with the provision of appropriate medical care, be effectively provided more economically on an outpatient basis or in an inpatient health care facility of a different type.

The Social Security Amendments of 1983 established a prospective payment system for Medicare and amended section 1866(a)(1)(F) of the Act to specify that with respect to hospitals, PROs must review—

- The validity of diagnostic and procedural information supplied by the provider;
- The completeness, adequacy, and quality of care provided;
- The appropriateness of admissions and discharges; and
- The medical necessity and appropriateness of care provided or proposed to be provided for which payment is sought on an "outlier" basis under the prospective payment system.

In addition, the amendments require that, effective October 1, 1983, hospitals receiving payment under the prospective payment system must maintain a review agreement with a PRO if one exists, and that after October 1, 1984, all hospitals must have an agreement with a PRO in order to receive Medicare payment.

Section 1154 also specifies PRO responsibilities concerning determinations, notifications to affected parties, types of cases to be reviewed, consultation with health care practitioners other than physicians, application of norms of care, operating responsibilities, recordkeeping, availability of PRO resources to perform private (i.e., non-Medicare) review, prohibitions of certain physicians from performing review, and the use of physicians to make certain denial decisions.

- Section 1154(a)(2) specifies that the purpose of PRO review is to determine, based on medical necessity and reasonableness, and upon the appropriateness of the facility where care is provided (but not based on the quality of such services), whether payment should be made for services provided or proposed to be provided under Medicare and that a PRO decision is conclusive for payment purposes on those issues related to medical necessity, reasonableness and appropriateness of care under Medicare except:

—If payment is allowed under the limitation of liability provisions of section 1879 of the Act.
—If the PRO determines that a grace period (not to exceed two days) should be granted to arrange post discharge care.
—If the denial was reversed on reconsideration or appeal under section 1155 of the Act.
—If the PRO determines that a SNF level of care is necessary but that such level of care is not available.

- Section 1154(a)(3) states that when the PRO makes an initial denial determination it must promptly notify the patient, the provider or practitioner, and the Medicare fiscal intermediary or carrier responsible for payment of the claim. The PRO must provide the provider and practitioner an opportunity for discussion and review of the initial denial determination.
- Section 1154(a)(4) requires the PRO to determine (in consultation with the Secretary) the types and kinds of cases for which the PRO will assume review authority and periodically to notify HCFA of such determinations.
- Section 1154(a)(5) requires the PRO to consult with nurses and other health care practitioners (other than doctors of medicine or osteopathy) and with representatives of institutional and non-institutional providers with respect to the PRO's responsibility for review.
- Section 1154(a)(6) directs the PRO, consistent with the terms of its contract, to apply professionally developed norms of care, diagnosis, and treatment based upon typical patterns of practice in the PRO area, taking into consideration national norms, where appropriate.
- Section 1154(a)(7) requires the PRO, to the extent necessary and appropriate to fulfill its contract, to:

—Make arrangements to utilize the review services of persons who are practitioners or specialists in the various areas of medicine (including

dentistry) or other types of health care. To the maximum extent practicable, these individuals must be engaged in the practice of their profession in the area served by the PRO.

—Perform review before or after, or both before and after, the provision of services for which the PRO has review responsibility.

—Examine the pertinent records of providers or practitioners in the case under review.

—Inspect the facilities in the area in which care or services are provided and the records of any practitioner or provider with respect to which the PRO has a responsibility for review.

• Section 1154(a)(8) requires the PRO to perform duties and functions, assume responsibilities and comply with any other requirements of the law and of HCFA regulations to implement Part B of Title XI.

• Section 1154(a)(9) requires the PRO to collect and maintain data relevant to its functions and to permit access to and use of data as the Secretary may require, subject to the provisions of section 1160 of the Act.

• Section 1154(a)(10) requires the PRO to coordinate its activities, such as information exchanges, with Medicare fiscal intermediaries and carriers, other PROs, and public and private organizations as a means of conducting economical and effective review.

• Section 1154(a)(11) requires the PRO to make available its services for contracting with public and private entities that pay for health care in the PRO area.

• Section 1154(b) prohibits a physician from reviewing health care services provided to patients for whom he or she was directly responsible for the services provided to the patients, or services provided in a facility in which the physician or certain family members had a direct or indirect significant financial interest.

• Section 1154(c) specifies that a PRO must use only licensed doctors of medicine, osteopathy or dentistry to make final denial determinations.

Section 1155 of the Act provides that any beneficiary entitled to Title XVIII benefits or any practitioner or provider dissatisfied with a determination made by a PRO in conducting its Title XI review responsibilities is entitled to a reconsideration of the determination by the PRO. If the reconsideration is adverse to the beneficiary and the amount in controversy is $200 or more, the beneficiary is entitled to a hearing by the Secretary. If the amount in controversy is $2,000 or more, the beneficiary is entitled to a judicial review of the Secretary's final decision. Separate regulations are currently being developed at 42 CFR Part 473. Subpart B, with regard to Utilization and Quality Control Peer Review Organization Reconsiderations and Appeals.

Section 1157 of the Act discusses the limitations on liability for (1) persons providing information to a PRO in the fulfullment of its contract; (2) persons employed by or entrusted by the PRO in the conduct of its review; and (3) physicians or providers particiapting in the review functions.

Section 1158 of ther Act provides States the option of contracting with PROs to perform medical or utilization review functions required under Medicaid. If the State enters into a contract with a PRO to perform review, the State will receive Federal financial participation (FFP) at the rate of 75 percent for expenditures for such review.

Section 1162 of the Act exempts from the provisions of Title XI, a Christian Science Sanitorium operated, or listed and certified, by the First Church of Christ Scientist, Boston, Massachusetts.

III. Provisions of These Regulations

Conduct of Review

A. Organization

1. We are proposing to change the title of 42 CFR Part 466 from "PSRO Hospital Review" to "Utilization and Quality Control Review". This change would allow us to maintain review regulations governing the PSRO program (which is scheduled to be phased-out) and to provide review regulations for implementing the PRO program within a single part of the CFR.

2. We would revise 42 CFR Part 466 by revising Subpart A-General Provisions, to include only the definitions applicable to both the PSRO and PRO programs. Subpart B—PSRO Hospital Review—would include the current regulations governing PSRO review, and we would establish a revised Subpart C—Assumption of Review Responsibility and Authority of Utilization and Quality Control Peer Review Organizations—to provide for the new PRO review regulations.

B. General Overview

These proposed regulations establish the basic review functions for PROs. Many of the proposed provisions are derived directly from provisions contained in the PSRO regulations. In some respects, however, the proposed regulations vary from PSRO rules where we have determined that changes are needed to implement review provisons contained in the Peer Review Improvement Act of 1982 and the Social Security Amendments of 1983 to reflect the repeal of the PSRO statute and to simplify the review process and eliminate many of the details. The specifics of PRO relationships with HCFA will be contained in each individual PRO contract. These proposed regulations do not describe PRO obligations to achieve specific objectives. Instead, they would specify the relationships between a PRO and other participants in the provision of health care services payable in whole or part by Medicare and (where a State has a contract with a PRO for review) Medicaid. The PRO contract will establish the objectives to be achieved by a contractor, and detail the amount, timing, and types of review to be performed. It should be noted that the provisions of this proposed rule may be revised to bring them into conformance with amendments to the rules implementing section 1879 of the Act, which concerns the limitation on liability when Medicare claims are disallowed on certain grounds. Proposed amendments are being developed and will be published for comment.

C. Specific Provisions

We are proposing the following specific regulations to implement the PRO program.

1. *Notification of PRO Designation and Implementation of Review.* We would essentially adopt for PROs the policies in current regulations covering the PSRO program found at 42 CFR 463.3, Notification of designation and capability. HCFA would award contracts to PROs. The contract would stipulate when the PRO will assume review. HCFA would send written notification to the State survey agency and Medicare intermediaries and carriers specifying the effective date of the contract and the facilities to be under PRO review. The contract would specify that the PRO must provide written notification to each facility scheduled to come under review and must supply the information about PRO review that the facility is required to give to the beneficiary upon admission (see proposed § 466.78). The PRO would also be required to publish a notice in at least one local newspaper of general circulation, indicating when it will assume review and making available for public inspection its plan for review of health care services as approved by HCFA. (See proposed § 466.72.)

2. *General Requirements for Assumption of Review.* Current regulations at 42 CFR 463.4 discuss

assumption of PSRO review. We would generally adopt those policies for PROs. Proposed § 466.74 would specify that the PRO must—

(a) Assume review authority in accordance with the schedule in its contract;

(b) Notify the appropriate Medicare fiscal intermediary and carrier that it is assuming review;

(c) Maintain records of agreements, review plans and subcontracts and make them available for pubic inspection; and

(d) Not subcontract with a facility to conduct review which affects payment: that is, all types of review activity except quality review. Facility subcontracts with the PRO for review functions other than quality review could constitute a clear conflict of interest because the hospital is being asked to determine whether the care it (or another hospital) has already provided or will provide is unnecessary or inappropriate, and payment is based upon that determination.

(e) Make its responsibilities under its contract with HCFA primary to all other interests and activities that it undertakes.

The Report of the Conference Committee on TEFRA (H.R. Rep. No. 97-760, 97th Cong. 2nd Sess. 443 (1982)) states that "The conferees intend that review organizations avoid financial conflicts of interest with providers subject to review." The report also states that the conference agreement does not "* * * bar a review organization from delegating the review function to a provider by subcontract, if the organization finds that the provider will effectively and efficiently review itself." Id. The organization must make such a finding in accordance with the terms of its contract with HCFA. However, after the passage of TEFRA, Pub. L. 98-21 changed dramatically the method of Medicare payment to most acute care hospitals. Instead of making retroactive cost reimbursement for each covered service, Medicare now pays a single, predetermined discharge rate resulting from each covered admission. Thus, for PRO's, the focus of review is the admission and the financial implications of a review have increased sharply. We believe review (other than quality review) performed by a facility for itself or any other facility for Medicare reimbursement would be a conflict of interest and would, therefore, be both inefficient and ineffective. The PRO may, however, subcontract with a non-facility organization to conduct review in a facility.

3. *Cooperation with Health Care Facilities.* Before implementation of review, a PRO would be required to make good faith efforts to discuss with all facilities scheduled to come under PRO review, the PRO's planned procedures for administration and review. (See proposed § 466.76.)

4. *Responsibilities of Health Care Facilities.* Under Section 1156 of the Act, one of a facility's obligations is to assure that items or services are medically necessary and appropriate and of professionally recognized standards of quality. PROs are responsible for the review of such factors. Failure of a facility to cooperate with a PRO could, therefore, result in exclusion from the Medicare program.

Section 1866(a)(1)(F) of the Act requires hospitals seeking Medicare reimbursement to maintain agreements with PROs beginning October 1, 1983 (where a PRO is operating). It requires all hospitals seeking Medicare reimbursement to have such agreements beginning October 1, 1984. These agreements must cover PRO review specified in proposed § 466.70(b).

Proposed § 466.78 would require health care facilities to maintain such agreements with the PRO and to cooperate with the PRO's assumption and conduct of review by—

(a) Allocating adequate space to conduct review;

(b) Providing to the PRO patient care and other pertinent data at the time the PRO is collecting information required to make its determination (in the case of review away from the facility, all required information must be photocopied and delivered to the PRO within 30 days of the PRO's request). When the PRO is performing post-admission preprocedure review, facilities must, except when that procedure must be performed on an emergency basis, provide to the PRO before performing the procedure, all required information.

(c) Informing Medicare beneficiaries in writing at the time of admission that care for which Medicare payment is claimed is subject to PRO review;

(d) Issuing denials when authorized by the PRO; and

(e) Assuring, in accordance with the provisions of its agreement with the PRO, that each case subject to preadmission review has been reviewed and approved by the PRO before admission to the hospital;

(f) Agreeing to accept financial liability for any admission subject to preadmission review that has either not been reviewed by the PRO and is subsequently determined to be not medically necessary, or has been denied by the PRO as a reult of preadmission review and where the hospital has been provided notice in accordance with its agreement with the PRO; and

(g) Agreeing that if the hospital admits a case subject to preadmission review that has not been reviewed, the case must receive retrospective prepayment review according to the review priority established by the PRO.

5. *Coordination with Medicare Fiscal Intermediaries and Carriers.* Section 466.80 of the proposed regulations would require PROs to negotiate memoranda of understanding with Medicare fiscal intermediaries and carriers, delineating the responsibilities of each party and providing for exchange of data, notification of review determinations, and any other pertinent procedures. The MOU would specify that PROs will annotate every outlier claim for payment as to whether the claim is approved or is denied in whole or part, but for other claims will annotate only those for which payment is denied in whole or in part, as specified in § 466.94 of these proposed regulations. (Currently PSROs must annotate every claim for payment). PROs would be required to submit the MOU to HCFA for approval at least 30 days prior to the scheduled implementation date of review. This section also states that the fiscal intermediary would not pay any claims for those cases which are subject to preadmission review by the PRO, until it receives notice that the PRO has approved the admission. We would also emphasize that a PRO determination that an admission is medically necessary is not a guarantee of payment because Medicare coverage requirements must still be met.

6. *Continuation of Functions Not Assumed by PROs.* We would retain the policy in 42 CFR 463.28 of the PSRO regulations to specify that any of the duties and functions of a PRO for which a PRO has not assumed responsibility under its contract with HCFA must be performed in the manner and to the extent otherwise provided for under the Act. (See proposed § 466.82.)

7. *Conclusive Effect of PRO Initial Determinations on Claims Payment.* Proposed § 466.83 would state that a determination by a PRO under 42 CFR Part 466, Subpart B is an initial determination and is appealable under 42 CFR Part 473, Subpart B. Proposed § 466.84 would state that a PRO initial determination is final and binding unless it is reconsidered or revised in accordance with the procedures in 42 CFR Part 473, Subpart B.

For consistency, we would amend 42 CFR 405.330(b) so that the number of grace days allowable under section 1879 of the Act and the number of grace days

allowable under the statutory provisions of section 1154(a)(2) are the same.

8. *Correlation of Title XI Functions with Title XVIII Functions.* Current regulations at 42 CFR 463.26 describe the correlation of Title XI and Title XVIII functions under the PSRO program. We would adopt the policies set out in these regulations for the PRO program and proposed § 466.86 would state that review determinations made by a PRO with regard to reasonableness, medical necessity and appropriateness of placement at an acute level of care are conclusive for payment purposes with the exceptions noted in item 7 above and that review by a PRO would replace the utilization review activities required of health care institutions under sections 1861(e)(6), 1861(j)(8) and (12), 1861(k) and 1865 of the Act. We would also require PROs to make determinations as to the appropriateness of the location in which procedures are performed. Although a procedure may meet the guidelines for medical necessity, a PRO may determine that it could, consistent with the provision of appropriate medical care, by effectively provided more economically on an outpatient basis or in an inpatient health care facility of a different type. In contrast to section 1156(d)(1)(B) of the PSRO law, PRO review will not remove the need for physician certification requirements. Therefore, the rules under section 1814 on physician certification under Title XVIII would continue to apply under PRO review. Review, appeals, and notifications of PRO determinations provided under the PRO statute would be in lieu of any other similar utilization or quality review activities provided for elsewhere in the Act.

b. Section 1154(a) of the Act requires a PRO to perform review of the reasonableness, medical necessity, quality, and appropriateness of care as specified in its contract with HCFA. Section 1154(a)(2) further states that PRO determinations based upon reasonableness, medical necessity, and appropriateness of placement at an acute level of care are conclusive for payment purposes (with certain exceptions).

There are, however, items or services which, because of their limited efficacy, experimental nature, or total lack of efficacy, have been found by the Medicare program as a matter of policy to be unreasonable or medically unnecessary for the treatment of illness or injury, and therefore excluded from coverage (section 1862(a)(1) of the Act). These items and services are listed in various administrative manuals issued by HCFA, such as the Medicare Intermediary and Carrier Manuals and the Hospital Manual. These manuals include a "Coverage Issues Appendix" in which many of HCFA's coverage policy decisions have been collected. HCFA has determined that some items or services dealt with in these manuals are of little or no efficacy and are excluded from coverage in all cases, regardless of patient, illness, treatment history or setting. For other items or services, coverage is dependent upon meeting specific conditions of medical necessity and reasonableness, such as prior treatments, type and severity of the illness, etc. (It should be noted, however, that some items and services are excluded for reasons other than the lack of medical necessity or reasonableness.)

We believe that sections 1154(a) (1) and (2) do not supersede HCFA's authority to enforce the coverage provisions of the statute. This coverage policy must be applied regardless of whether a PRO or a Medicare fiscal intermediary or carrier makes a coverage determination. (Stated another way, a Medicare beneficiary should receive the same coverage determinations whether furnished by a PRO or by an intermediary or carrier.) That is, the PRO must comply with HCFA's coverage policy, as stated in the Coverage Issues Appendix and other program issuances. As a PRO determines the medical necessity and reasonableness for the cases it reviews, it will use these Medicare guidelines. The Medicare fiscal intermediary or carrier must make the coverage determinations for every claim; however, it is bound by any PRO determination with respect to medical necessity issue. For example, a PRO may determine that a patient's hospital stay was medically necessary, but an intermediary may still determine that the beneficiary was not furnished a semi-private room; or had exhausted his covered days of care; or was subject to payment by private insurance or another government agency; or received a routine physical checkup, or personal comfort items; etc. For those items or services included in the Coverage Issues Appendix that have not been reviewed by a PRO and where a coverage determination depends on meeting specific conditions of medical necessity and reasonableness, the Medicare fiscal intermediary or carrier must obtain from the PRO a finding of medical necessity and reasonableness and abide by that finding.

9. *Examination of the Operation and Records of Health Care Facilities and Practitioners.* Generally, we would adopt for PROs the policies in the PSRO regulations found at 42 CFR 466.4, Examination of the operation and records of hospitals, and would specify in proposed § 466.88 that a PRO would be authorized under section 1154(a)(7) of the Act to examine the operation and records of facilities that are pertinent to services provided to Medicare beneficiaries in order to (1) perform review functions; (2) evaluate cases for which review has shown a deviation from PRO norms and criteria; and (3) evaluate the capability of the facility to perform subcontracted PRO functions (i.e., quality review). A PRO would be permitted to examine the records of non-Medicare patients only if authorized to do so by the facility or practitioner or by HCFA under sections 1815 and 1833 of the Act.

10. *Cooperation by Health Care Facilities and Practitioners.* We would permit a PRO to take the following actions if a health care facility or practitioner refuses to allow a PRO to perform its review duties: (1) Determine that the facility or practitioner is in violation of section 1156(a)(3) of the Act and report to the Department's Inspector General (IG); or (2) issue denials for those claims it is unable to review and report to the Department's Inspector General. The PRO would deny a claim if a facility fails to respond timely to a request for information about that claim, so long as the PRO provides sufficient notice and a reasonable amount of time for the facility to comply. (See proposed § 466.90).

11. *General Requirements for PRO Review.* We would generally adopt the PSRO requirements for review. Under these proposed regulations, a PRO would be authorized to conduct review to determine if services and items are reasonable and necessary and delivered in the most appropriate setting (see proposed § 466.92). Currently, PSRO's are required to annotate all Medicare claims from health care facilities under their review as to whether the claims are approved for payment or are denied. This has been an administratively cumbersome and ineffective review procedure and therefore, we are proposing to modify it in the PRO requirements. Instead, the PRO would annotate every claim for additional payment for an "outlier" case but would annotate only those other claims that are denied as unreasonable, medically unnecessary, not allowable, or inappropriate. We believe this would enhance the use of available program resources and accommodate the transition of health care facilities to automated data processing (ADP)

systems for Medicare claims. (See proposed § 466.94).

12. *Opportunity To Discuss Proposed Initial Denial Determination.* In § 466.93, we would require the PRO to afford the provider and the patient's attending physician (or other attending health care practitioner) the opportunity to discuss with the PRO physician advisor any proposed denial determination and its basis before that determination is made. An initial denial determination by a PRO may be appealed in accordance with procedures being developed in 42 CFR Part 473, Subpart B.

13. *Notice of PRO Initial Denial Determination.* We would generally adopt the language of the PSRO regulations at 42 CFR 466.16 regarding denial notices, except that we would shorten some of the time periods for the issuance of the denial notice. Section 466.94 of the proposed regulations would describe the procedures a PRO must follow in making an initial denial determination. A PRO would be required to notify the patient or the patient's representative, the attending physician, the Medicare fiscal intermediary or carrier, and the facility. This section would also describe the content of the notice and would require the PRO to document and preserve a record of all initial denial determinations.

14. *Review Period and Reopening of Cases.* Section 466.96 of the proposed regulations would specify that the period during which a PRO or its subcontractor must review and deny payment would generally be within one year of the date that the claim that includes the item or service was submitted to the Medicare fiscal intermediary or carrier. Denials would not routinely be made after one year from that date. However, denials could be made within four years of the date that the claim that includes the item or service was submitted to the Medicare fiscal intermediary or carrier, upon the written approval of the HCFA Regional Administrator. This approval will be given only when the care in question is grossly improper or is of sufficient cost to warrant the administrative burden on Medicare involved in reopening these cases. The proposed regulations would be consistent with Medicare regulations containing exceptions to the rules of administrative finality of coverage decisons located at 42 CFR 405.750. A PRO determination could be reopened and revised by the PRO or any of its subcontractors (1) if additional information is received on the patient's condition; (2) if reviewer error occurred in interpretation or application of Medicare coverage policy or review criteria; or (3) if due to clerical error. A determination may be reopened at any time if it was obtained through fraud or a similar abusive practice irrespective of whether such a practice constitutes fraud. A subcontractor would be allowed to revise its own denials in situations (2), (3) and (4) above, only with the specific written concurrence of the PRO.

15. *Reviewer Qualifications and Participation.* Current regulations at 42 CFR 466.21 specify the qualifications for PSRO reviewers. We would essentially adopt these same requirements for the PRO program, but would eliminate many of the details in the current regulations. We are proposing in section 466.93 the following:

(a) *Peer Review by Physicians or Dentists.* Services ordered or provided by a doctor of medicine, doctor of osteopathy or doctor of dentistry may be denied only by another doctor of medicine, doctor of osteopathy or doctor of dentistry, respectively, who has active admitting privileges at one or more hospitals in the PRO area. However, when a PRO determines that peer practitioners are not available to make such determinations (for example, the lack or limited number of peers prevents review from being conducted efficiently or without actual or potential conflict of interest), another doctor of medicine or doctor of osteopathy may make such determinations for services ordered or performed by a doctor of medicine, doctor of osteopathy, or doctor of dentistry. For purposes of this paragraph, individuals licensed to practice as "medical officers" in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands may review care of their peers but not the care provided by doctors of medicine or osteopathy.

(b) *Peer Review by Health Care Practitioners Other than Physicians.* Health care practitioners other than physicians may review services provided by such practitioners. This provides an opportunity for review of services provided by such practitioners from the perspective of those most familiar with the usual practices of these practitioners.

(c) *Persons Excluded From Review.* A person may not review health care services or make denial determinations if he or she or a member of his or her family (i) participated in developing or executing the beneficiary's treatment plan, (ii) is a member of the beneficiary's family, or (iii) is a governing body member, officer, partner, or 5 percent or more owner, or managing employee in the health care facility where the services were or are to be provided.

16. *Norms, Criteria, and Standards.* Current regulations at 42 CFR 466.50–466.56 contain the requirements for norms, criteria and standards in the PSRO program. We would generally adopt these requirements for the PRO program. However we would eliminate some of the detailed language, and due to its elimination in TEFRA, the requirement that norms, criteria, and standards be reviewed by HCFA. Under proposed regulations, a PRO would be required to (1) negotiate with HCFA the use of national, or where appropriate, regional norms for conducting review to achieve objectives set forth in the PRO contract. However, with regard to the number of procedures selected for preadmission review, a PRO must use national admission norms; (2) establish written criteria to be used in review based on typical patterns of practice in the PRO area, or national criteria when appropriate; and (3) establish written criteria and standards to be used in conducting quality review studies. A PRO would be permitted to establish specific criteria and standards to be applied only in certain locations in the PRO area, if appropriate. In assessing the need for and appropriateness of a stay in a health care facility, the PRO would be required to apply criteria specifying clinical indications of the necessity of admission, continued stay (in the case of day outliers in facilities under a prospective payment system as specified in section 1866(a)(1)(F) of the Act) surgery and other invasive procedures, and the appropriateness of the level of care provided. The PRO would also be required to identify diagnoses, conditions, and clinical areas or procedures which, on the basis of past experience or data, justify in-depth review. (See proposed § 466.100).

17. *Involvement of Health Care Practitioners Other Than Physicians.* Current regulations at 42 CFR 466.20 discuss the involvement of health care practitioners other than physicians in the PSRO review process. We generally would adopt these requirements for PROs and would specify that if a PRO has assumed the review of care provided by health care practitioners other than physicians, it would be required to involve the peers of those practitioners, where possible, in the development of criteria, selection of norms, and initial determinations. Health care practitioners other than physicians would also participate in the conduct of quality review studies involving services provided by peers in

their professional discipline. (See proposed § 466.102).

18. *Coordination of Activities.* Section 466.104 of the proposed regulations would require that the PRO coordinate activities (including information exchanges) that are consistent with economical and efficient PRO review, among Medicare fiscal intermediaries and carriers, other PROs, and other public or private review organizations, as appropriate.

Relationships With Medicaid

A. General

Under the PSRO statute and regulations, State Medicaid agencies have the option of contracting with individual PSROs to perform medical or utilization review of Medicaid patients. If a State agency elected to contract with a PSRO, the agency was deemed to be in compliance with Medicaid utilization control requirements (currently found at 42 CFR Part 456) for those services and providers under review and was eligible for Federal financial participation (FFP) at the rate of 75 percent for the costs of PSRO review (see current regulations at 42 CFR 433.15). In establishing regulations for the PRO program, we are proposing the same requirements relating to the relationship between State agencies and PSROs, but are clarifying what utilization control requirements are deemed met.

B. Revisions of Current Regulations

1. *Coordination of Medicaid with Peer Review Organizations.* As with PSRO requirements, when a State contracts with a PRO for medical or utilization review, the State must submit a plan amendment to the Regional Office for approval. Current regulations at 42 CFR 431.630 specify the content of the State plan amendment necessary when a State contracts with a PSRO to perform medical or utilization review. The regulations were issued on October 1, 1981 as interim final regulations (46 FR 48564), pending OMB approval of the State plan reporting requirements. The language of the regulation stated that the State plan must *specify* how the contract with the PSRO satisfied certain requirements. This could have required an exhaustive narrative description and would be a burden for the States. Because such reporting requirements would be a burden for the States, we are proposing to revise § 431.630 to require only that the State plan *assure* that the requirements are met.

2. *Rates of FFP for Administration.* We would revise § 433.15(b)(6)(i) to state that a State that contracts with a PRO will be eligible for FFP at 75 percent for funds expended for performance of medical and utilization review under the contract.

3. *State Plan Requirements.* We would revise § 456.2 to specify that if a State contracts with a PRO, the medical and utilization review requirements would be deemed to be met. If the State contracts for Medicaid review with a type of organization other than a PSRO or PRO, the utilization control requirements would not be deemed met. Under PSRO review, the former section 1156(d) of the Act required each PSRO to formulate a physician certification process of its own that, under the previous provisions of section 1165 of the Act, superseded the physician certification requirements of Titles XVIII and XIX. PSRO implementing regulations at 42 CFR 463.26 discuss PSRO review as it relates to physician certification and medical and utilization review activities. The PRO legislation contains no parallel language about the physician certification requirements. We are proposing, therefore, that when a State Medicaid agency contracts with a PRO for review, only the State's medical and utilization review requirements would be deemed met. We are also proposing that in the case of inpatient acute care review this review will also serve as PRO medical necessity and appropriateness review for patients who are dually entitled to benefits under Medicare and Medicaid. Physican certification requirements and plan of care requirements remain the responsibility of the State agency and would not be deemed met through an approved PRO contract.

4. *Effective Utilization Control.* Current regulations at 42 CFR 456.650 require that FFP be reduced for long-stay inpatient services for any quarter in which a State fails to make a satisfactory showing that it has an effective utilization control program, except that this does not apply in facilities in which a PSRO has assumed binding review. We would revise this section to make it applicable to facilities where either PSRO (until there is a PRO) or PRO review is being conducted under an approved contract.

5. *Requirements for an Effective Utilization Control Program.* We would revise current regulations at 42 CFR 456.652 to require that the State agency must include facilities in which a PRO is performing review in its quarterly showing and complete an annual review relating to physician certification and plan of care requirements.

6. *Requirements for Content of Showings and Procedures for Submittal.* We would revise current regulations at 42 CFR 456.654 to require an agency's showing for a quarter to include the dates a peer review organization was responsible for review in a facility for which a showing would otherwise have had to be made.

IV. Impact Analysis

Executive Order 12291 and the Regulatory Flexibility Act

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would:

- Result in annual effect on the national economy of $100 million or more;
- Result in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or
- Have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S-based enterprises to compete with foreign-based enterprises in domestic or import markets.

The Regulatory Flexibility Act requires that a regulatory flexibility analysis be prepared unless the proposed regulation would not have a significant impact on a substantial number of small entities.

Under both the Executive Order (E.O.) and the Regulatory Flexibility Act (RFA), the analyses must examine regulatory alternatives which minimize unnecessary burden or otherwise assure that regulations are cost-effective.

As explained above, this purposed rulemaking has two general pruposes: To establish the review functions that would be performed by PROs, and to describe the relationship between PROs and State Medicaid agencies. Thus, the provisions of this proposal would have an impact on PROs, the providers and practitioners that furnish the services that PROs would review, and State Medicaid agencies. For purposes of the RFA, we treat all providers and practitioners as small entities. Therefore, since it is clear that a substantial number of small entities would be affected by this proposal, we have focused on whether the magnitude of the projected impact of these proposals is so large as to require us to perform a regulatory impact analysis or a regulatory flexibility analysis.

As a result of PRO review, a substantial number of hospitals may experience a reduction of expected Medicare revenues. However, we do not believe that the amount of these reductions will be significant in comparison to the total revenues of

individual hospitals. In general, we consider the impact of a change to be significant only if it results in a difference in Medicare payments to an entity that equals or exceeds three percent of the entity's total revenue. PRO review would affect a hospital's Medicare revenue when the PRO denies payment for medically unnecessary or inappropriate care that the hospital is providing or has provided. Based on historical experience, we do not expect payment denials as a result of PRO review to approach 3 percent of total hospital revenues. During nine years of Federal sponsorship of peer review by PSROs, denials have been no more than one to two percent of total Medicare days of care, and a far smaller portion of total days of care. In this regard, we also wish to point out that payments would be actually denied only when a PRO determined that the services were inappropriate or medically unnecessary, and that this should reasonably have been recognized beforehand; thus, a hospital could not justifiably claim that it was entitled to payment for the cost of those services. Even though the hospital's revenues may be less than it *expected*, any reductions resulting from these reviews would not be reductions of payments for services that were actually covered under the Medicare program.

We have also determined that the provisions governing the relationships between Medicaid State agencies and PROs will generate a negligible economic impact. These provisions simply clarify which utilization control requirements are deemed met by the Medicaid agency when the agency contracts with a PRO, and would not constitute a major rule. Also, since State Medicaid agencies are not considered small entities under the RFA, a regulatory flexibility analysis is not required to estimate the impact on State Medicaid agencies.

For the reasons noted above, we have determined that this proposed rule is not a major rule under E.O. 12291, and the Secretary certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

Sections 456.654, 466.72, 466.74, 466.78, 466.80 and 466.94 of this rule contain information collection requirements. As required by 44 U.S.C. 3504(h), enacted by the Paperwork Reduction Act of 1980, (Pub. L. 95–511) we will submit a copy of this rule to the Office of Management and Budget (OMB) for its review of those requirements.

V. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and respond to them in the preamble to that rule.

VI. Effect of Final Rule on PRO Contracts

We are now engaged in selecting organizations to serve as PROs pursuant to recently issued Requests for Proposals (RFPs). Should any of the contracting requirements have to be revised as a result of changes made to regulations following our consideration of public comments, we will amend the RFPs, or if contracts have been entered into, we will undertake to amend the contracts accordingly.

VII. List of Subjects

42 CFR Part 405

Administrative practice and procedure, Certification of compliance Clinics, Contracts (agreements), End-Stage renal disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

42 CFR Part 431

Administrative practice and procedure, Contracts (agreements), Fair hearings, Federal financial participation, Grant-in-Aid program—health, Health facilities, Health maintenance organizations (HMO), Indians, Information (Disclosure), Medicaid, Mental health centers, Prepaid health plans, Privacy, Quality control, Reporting requirement.

42 CFR Part 433

Administrative practice and procedure, Assignment of rights, Claims, Contracts (agreements), Cost allocation, Federal financial participation, Federal matching provision, Grant-in-Aid program—health, Mechanized Claims Processing and Information Retrieval Systems, Medicaid, State fiscal administration, Third party liability.

42 CFR Part 456

Administrative practice and procedure, Grant-in-Aid program—health, Health facilities, Medicaid, Mental health centers, Nursing homes, Penalties, Reporting requirements, Utilization control, Utilization review.

42 CFR Part 466

Appeals, Delegation, Denials, Grant-in-Aid program—health, Health care, Health facilities, Health professions, Hospitals, Hospital review, Norms/criteria/standards, Physicians, Professional Standards Review Organizations (PSRO), Reconsiderations, Utilization and Quality Control Peer Review Organizations (PRO).

42 CFR Chapter IV would be amended as set forth below.

I. The table of contents is amended by revising the title of Subchapter D and Part 466 as follows:

CHAPER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

* * * * * * *

SUBCHAPTER D—PEER REVIEW ORGANIZATIONS

* * * * * * *

PART 466—UTILIZATION AND QUALITY CONTROL REVIEW

* * * * * * *

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

II. A. The authority citation for Subpart C of Part 405 is revised to read as follows:

Authority: Secs. 1102, 1154(a)(2)(B), 1815, 1833, 1842, 1862, 1866, 1870, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c-3(a)(2)(B), 1395g, 1395l, 1395u, 1395y, 1395cc, 1395gg, 1395hh, 1395pp), and 31 U.S.C. 3711.

B. 42 CFR 405.330 is amended by revising paragraph (b) to read as follows:

§ 405.330 Payment for certain nonreimbursable expenses.

* * * * * * *

(b) Payment may be made under this provision for not more than 2 days for inpatient hospital services, post-hospital extended care services, or home health services (as defined in §§ 409.10, 409.20, and 405.236, respectively) when the fiscal intermediary or PRO determines that additional time is required in order to arrange for post discharge care, and when the additional care is furnished after whichever of the following days is the earlier:

(1) The day on which the individual, to whom such items or services were furnished, has been determined, under § 405.332(a), to have knowledge, actual or imputed, that such items or services

were excluded from coverage by reason of § 405.310(g) or § 405.310(k); or

(2) The day on which the provider of services, which furnished such items or services, has been determined, under § 405.332(b), to have knowledge, actual or imputed, that such items or services were excluded from coverage by reason of § 405.310(g) or § 405.310(k).

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

The authority citation for Part 431 reads as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

III. 42 CFR Part 431 is amended as follows:

A. The table of contents for Part 431 is amended by revising the title of § 431.630 to read as follows:

* * * * * * *

Subpart M—Relations With Other Agencies

* * * * * * *

431.630 Coordination of Medicaid with peer review organizations.

* * * * * * *

B. Section 431.630 is revised to read as follows:

§ 431.630 Coordination of Medicaid with peer review organizations.

(a) The State plan may provide for the review of Medicaid services by a PSRO or PRO designated under Part B of Title XI of the Act. Medicaid requirements for medical and utilization review are deemed to be met for those services or providers subject to such contracted review.

(b) The State plan must assure that the contract with the PSRO or PRO satisfies the following requirements:

(1) The provisions of paragraphs (a), (b), (c), (g), (h), (i), (m), and (n) of § 431.503 of this part are met;

(2) A monitoring and evaluation plan is in effect by which the State will further assure satisfactory performance by the PSRO or PRO;

(3) The services and provider subject to PSRO or PRO review are identified; and

(4) The review activities performed by the PSRO or PRO are not inconsistent with those activities performed under Title XI, Part B for the review of Title XVIII services, including a description of whether and to what extent PSRO or PRO determinations will be considered conclusive for payment purposes.

PART 433—STATE FISCAL ADMINISTRATION

The authority citation for Part 433 reads as follows:

Authority: Secs. 1102, 1902(a)(25), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), and 1912 of the Social Security Act (42 U.S.C. 1302, 1396(a)(3), 1396a(a)(25), 1396b(d)(5), 1396b(o), 1396b(p), and 1396(k), unless otherwise noted.

IV. 42 CFR Part 433 is amended by revising §433.15(b)(6)(i) to read as follows:

§ 433.15 Rates of FFP for administration.

* * * * *

(b) *Activities and rates.*

* * * * *

(6)(i) Funds expended for the performance of medical and utilization review by a Utilization and Quality Control Peer Review Organization under a contract entered into under section 1902(d) of the Act: 75 percent (section 1903(a)(3) of the Act).

* * * * *

PART 456—UTILIZATION CONTROL

The authority citation for Part 456 reads as follows:

Authority: Sec. 1102 of the Social Security Act, 49 Stat. 647 (42 U.S.C. 1302).

V. 42 CFR Part 456 is amended as follows:

A. Section 456.2 is amended by revising paragraph (b) to read as follows:

§ 456.2 State plan requirements.

* * * * *

(b) These requirements may be met by the agency by:

(1) Assuming direct responsibility for assuring that the requirements of this Part are met:

(2) Deeming, if the agency contracts with a PSRO designated under the former Part B of Title XI of the Act in accordance with § 431.630 of this subchapter; or

(3) Deeming of medical and utilization review requirements if the agency contracts with a PRO to perform that review, which in the case of inpatient acute care review will also serve as the initial determination for PRO medical necessity and appropriateness review for patients who are dually entitled to benefits under Medicare and Medicaid.

* * * * *

B. Section 456.650(c) is revised to read as follows:

Subpart J—Penalty for Failure To Make a Satisfactory Showing of an Effective Institutional Utilization Control Program

* * * * *

§ 456.650 Basis, purpose and scope.

* * * * *

(c) *Scope.* The reductions required by this subpart do not apply to—

(1) Services provided under a contract with a health maintenance organization; or

(2) Facilities in which a Professional Standards Review Organization (PSRO) is performing review under contract with the State (pursuant to § 431.630 of this chapter), but only until a contract is awarded in the area to a Utilization and Quality Control Peer Review Organization (PRO); or

(3) Medical and utilization reviews in facilities for which a PRO has a contract with the State pursuant to § 431.630 of this chapter.

C. Section 456.652 is amended by adding paragraph (d) to read as follows:

§ 456.652 Requirements for an effective utilization control program.

* * * * *

(d) *Facilities in which a PRO is performing review in accordance with § 431.630 of this chapter.* The requirements of paragraphs (a)(1) and (b) of this section apply with respect to recipients for which the agency intends to claim FFP even if the PRO is performing medical and utilization review. The agency must include these facilities in its quarterly showing and complete an annual review consisting of the requirements contained in paragraphs (a)(1) and (2) of this section.

D. Section 456.654(a)(4) is revised, a new paragraph (a)(5) is added, and current paragraphs (a)(5) to (a)(8) are redesignated as (a)(6) to (a)(9) respectively, as follows:

§ 456.654 Requirements for content of showings and procedures for submittal.

(a) An agency's showing for a quarter must—

* * * * *

(4) If review has been contracted to a PSRO pursuant to § 431.630 of this chapter, list the date the PSRO contracted for review.

(5) If medical and utilization review responsibility is being performed by a PRO in a facility, list the date the PRO contracted for review (see § 431.630 of this chapter).

(6) List all dates of on-site reviews completed by review teams anytime during the 12-month period ending on the last day of the quarter.

(7) For all facilities in which as on-site review was required but not conducted list the facility by name, address and provided number;

(8) For each on-site review in a mental hospital, skilled nursing or intermediate care facility and primarily cares for

mental patients, or inpatient psychiatric facility, list the name and qualifications of one team member who is a physician; and

(9) For each on-site review in an intermediate care facility or skilled nursing facility that does not primarily care for mental patients, list the name and quaifications of one team member who is either a physician or registered nurse.

PART 466—UTILIZATION AND QUALITY CONTROL REVIEW

VI. Part 466 is amended as set forth below:

A. The title of Part 466 is revised to read as set forth above.

B. The table of contents is amended to reflect the revision of Subpart A—"General Provisions" to include only current § 466.2, which is redesignated as § 466.1, the revision of the title and contents of Subpart B—PSRO Hospital Review, to include current § 466.1 which is redesignated as 466.2 and current §§ 466.3 through 466.63 with center headings, the deletion of all of Subparts D and E and the revision of Subpart C. As revised, the table of contents reads as follows:

PART 466—UTILIZATION AND QUALITY CONTROL REVIEW

Subpart A—General Provisions

Sec.
446.1 Definitions.

Subpart B—PSRO Review

General

466.2 Statutory provisions and applicability.
466.3 Review objectives.
466.4 Examination of the operation and records of hospitals.
466.5 Refusal of hospital to allow PSRO entry and performance of review.
466.6 Reports to HCFA.
466.10 General requirements for concurrent review.
466.11 Admission review.
466.12 Continued stay review.
466.13 Elective procedures review.
466.14 Preadmission review.
466.15 Modificatons of review activities.
466.16 Notice of adverse determination.
466.17 Informing discharge planners.
466.18 Medical care evaluation (MCE) studies.
466.19 Profile analysis.
466.20 Involvement of health care practitioners other than physicians.
466.21 Reviewer qualifications and participation.
466.22 Alternative review methods.

Delegated Review

466.30 Opportunity for hospitals to seek delegation.
466.31 Letter of interest.
466.32 Details of delegated review plan.

Sec.
466.33 Determination and notice of hospital capability.
466.34 Delegation of review activities.
466.35 Agreement with delegated hospitals.
466.36 PSRO monitoring and reassessment of hospital capability.
466.37 Reconsiderations.
466.38 Monitoring by HCFA.
466.39 PSRO responsibilities when delegation is denied, withdrawn, or disapproved.

Norms, Criteria, and Standards for Review

466.50 Basic requirement for PSRO area norms, criteria, and standards.
466.51 Establishment of norms, criteria, and standards.
466.52 Dissemination of norms, criteria, and standards.
466.53 Use of norms, criteria, and standards.
466.54 Revisions.
466.55 Regional norms, criteria, and standards.
466.56 Review of PSRO norms, criteria, and standards.

Financing of Review Activities

466.60 Applicability and scope.
466.61 Areawide budget.
466.62 Reimbursement to delegated hospitals.
466.63 Reimbursement for nondelegated hospitals.

Subpart C—Assumption of Review Responsibility Authority of Utilization and Quality Control Peer Review Organizations

Assumption of Review Responsibility

466.70 Statutory provisions and applicability.
466.72 Notification of PRO designation and implementation of review.
466.74 General requirements for assumption of review.
466.76 Cooperation with health care facilities.
466.78 Responsibilities of health care facilities.
466.80 Coordination with Medicare fiscal intermediaries and carriers.
466.82 Continuation of functions not assumed by PROs.

PRO Review Functions

466.83 Initial determinations.
466.84 Conclusive effect of PRO initial determinations.
466.86 Correlation of Title XI functions with Title XVIII functions.
466.88 Examination of the operation and records of health care facilities.
466.90 Lack of cooperation by a health care facility or practitioner
466.92 General requirements for PRO review.
466.93 Opportunity to discuss proposed initial denial determination.
466.94 Notice of PRO initial denial determination.
466.96 Review period and reopening of denial determinations.
466.98 Reviewer qualifications and participation.
466.100 Norms, criteria, and standards.
466.102 Involvement of health care practitioners other than physicians.
466.104 Coordination of activities.

Authority: Sec. 1152 of the Social Security Act, 42 U.S.C. 1302. Subpart B is also issued under sec. 150 of Pub. L. 97-248, 42 U.S.C. 1320c note. Subpart C is also issued under sec. 1151-1163, and 1868(a) of the Social Security Act, 42 U.S.C. 1320c-1320-12, and 1395cc(a).

C. Section 466.1 is redesignated as § 466.2 and § 466.2 is redesignated as § 466.1.

D. Newly designated § 466.1 is amended by deleting definitions of "Act", "HCFA", "National Council", "Other Attending Health Care Practitioner" and "Secretary" and revising the definitions of "Active staff privileges", assurance", "Concurrent review", "Continued stay review", "Delegated Hospital", "Health care service", "Length-of-stay norms", "Length-of-stay projection", "Non-delegated hospital", "Norm", "Physician", "Quality Review Study", "Skilled nursing facility (SNF)", "Working day", and adding in alphabetical order, the definitions of "Annotation," "Denial", "Diagnosis-Related Group (DRG)", "DGR Validation", "Five Percent or more owner", "Grace days", "Health care facility or facility", "Non-facility organization", "Outliers", "Practitioner," "PRO," "PRO review", "Provider", "Retrospective review", "Review responsibility", "State survey agency", "Subcontractor" and "Utilization and Quality Control Peer Review Organization" (PRO) as follows:

§ 466.1 Definitions.

Active staff privileges means: (a) That a physician is authorized on a regular, rather than infrequent or courtesy, basis; (1) to order the admission of patients to a facility; (2) to perform diagnostic services in a facility; or (3) to care for and treat patients in a facility; or (b) that a health care practitioner other than a physician is authorized on a regular, rather than infrequent or courtesy, basis to order the admission of patients to a facility.

Admission review means a review and determination by a PSRO or a PRO of the medical necessity and appropriateness of a patient's admission to a specific facility.

* * * * *

Annotation means a notation on a claim for payment of health care services that are subject to peer review that indicates the PRO's approval or partical or total denial of that claim.

Area means the geographic area for which a PSRO or PRO has been designated.

* * * * *

Concurrent quality assurance means a form of PSRO review that focuses on the quality of health services furnished to individual patients, performed while the patient is in the hospital.

Consurrent review means a PSRO review and determination focused on the necessity and appropriateness of inpatient hospital services performed while the patient is in the hospital. It includes admission review, continued stay review and, when appropriate, procedure review.

Continued stay review means PSRO or PRO review and determination, after admission review and during a patient's hospitalization, of the medical necessity and appropriateness of continuing the patient's stay at a hospital level or care.

* * * * *

Delegated Hospital means a hospital to which PSRO review functions are delegated under Subpart B.

Denial means a negative determination by a PRO that health care services provided or proposed to be provided to a patient are not medically necessary, or are not reasonable, or are not at the appropriate level of care.

Diagnosis Relate Group (DRG) Means a system for assigning or classifying patients into groups that are clinically coherent and homogeneous with respect to resources used. DRGs are used for purposes of payment to hospitals under the Medicare prospective payment system.

DRG Validation means a part of the prospective payment system in which a PRO validates that DRG assignments are based on the correct diagnostic and procedural information.

Five Percent or More Owner means a person (including, where appropriate, a corporation) who:

(a) Has an ownership interest of 5 percent or more;

(b) Has an indirect ownership interest equal to 5 percent or more;

(c) Has a combination of direct and indirect ownership interests (the possession of equity in the capital, the stock, or the profits of an entity) equal to five percent or more; or

(d) Is the owner of an interest of five percent or more in any obligation secured by an entity, if the interest equals at least five percent of the value of the property or assets of the entity.

* * * * *

Grace Days means a period of not more than two days authorized by a PRO for the purpose of arranging post discharge care when both a health care facility and the patient did not know and could not reasonably be expected to have known that payment for the service(s) or item(s) would not otherwise be made under the Medicare program. Under prospective payment, grace days are granted only in the case of day outliers.

Health care facility or *facility* means an organization involved in the delivery of health care services or items for which reimbursement may be made in whole or in part under Title XVIII of the Act.

* * * * *

Health care service means a service or item, including hospitalization, for which payment may be made (in whole or in part) under Title XVIII of the Act.

* * * * *

Length-of-stay norms means established statistical measures of average lengths of stay for patients of similar age and diagnosis or condition used by a PSRO.

Length-of-stay projection means a criterion used by a PSRO which defines the time at which patients of similar age and diagnosis or condition would be expected to be ready for discharge.

* * * * *

Non-facility organization means a corporate entity with which a PRO proposes to subcontract or has subcontracted to perform peer review functions included in a contract between the PRO and HCFA and which (1) is not a health care facility; (2) is not a 5 percent or more owner of a facility; and (3) is not owned by one or more health care facilities in the PRO area.

Nondelegated hospital means a hospital in which the PSRO conducts review activities using its own review procedures, and has not delegated review activities to the hospital under Part 466, Subpart B of this chapter.

Norm means a pattern of performance in the delivery of health care services that is typical for a specified group.

Outliers means those cases that have either an extremely long length of stay or extraordinarily high costs when compared to most discharges classified in the same DRG.

* * * * *

Physician means a doctor of medicine or osteopathy or another individual who is authorized under State or Federal law to practice medicine and surgery, or osteopathy. This includes medical officers in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Practitioner means an individual credentialed within a recognized health care discipline and involved in providing the services of that discipline to patients.

* * * * *

PRO means a Utilization and Quality Control Peer Review Organization.

PRO review means review performed in fulfillment of a contract with HCFA, either by the PRO or its subcontractors.

* * * * *

Provider means

—For purposes of Medicare, the definition contained in section 1861(u) of the Act, and suppliers.

—For purposes of Medicaid, any individual or entity providing health care services for which Medicaid payment is made.

Quality review Study means an assessment of a verified patient care problem for the purpose of improving patient care through peer analysis, intervention, and resolution of the problem.

Retrospective review means review that is conducted after services are provided to a patient. The review is focused on determining the appropriateness, necessity, quality, and reasonableness of health care services provided.

* * * * *

Review responsibility means (1) the responsibility of the PRO to perform review functions prescribed under Part B of Title XI of the Act and the Social Security Amendments of 1983 and the regulations of this part; (2) the responsibility to fulfill the terms and meet the objectives set forth in the negotiated contract between HCFA and the PRO; and (3) the authority of a PRO to make conclusive determinations regarding the medical necessity, quality, and appropriations of health care.

Skilled nursing facility (SNF) means a health care institution or distinct part of an institution that (a) is primarily engaged in providing skilled nursing care of rehabilitative services to injured, disabled, or sick persons, and (b) has an agreement to participate in Medicare or Medicaid or both (see Part 405, Subpart K and Part 442 of this chapter), other than a Christian Science sanatorium operated or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts.

* * * * *

State survey agency means an agency performing provider surveys pursuant to an agreement under section 1864(a) of the Act.

"Subcontractor" means a facility or a non-facility organization under contract with a PRO to perform PRO review functions.

Utilization and Quality Control Peer Review Organization (PRO) means an organization that has a contract with HCFA to review, pursuant to Part B of title XI of the Act, the health care services or items provided or proposed

to be provided to Medicare beneficiaries.

Working day means any one of at least five days of each week (excluding, at the option of each PSRO or PRO, legal holidays) on which the necessary personnel are available to perform review in the hospital.

Subpart B—[Amended]

E. Subpart B is amended by revising the title to read "PSRO Review", including the newly redesignated § 466.2 and incorporating therein current §§ 466.3 through 466.63, and adding center headings as follows: Center heading "Delegated Review" is added immediately before § 466.30, center heading "Norms, Criteria, and Standards for Review" is added immediately before § 466.50 and center heading "Financing of Review Activities" is added immediately before § 466.60.

F. Subpart C is revised to read as follows:

Subpart C—Assumption of Review Responsibility and Authority of Utilization and Quality Control Peer Review Organizations

Assumption of Review Responsibilities by PROs

§ 466.70 Statutory provisions and applicability.

(a) The Social Security Act as amended by the Tax Equity and Fiscal Responsibility Act of 1982 and the Social Security Amendments of 1983 requires that a PRO must review those services and items provided by physicians, other health care professionals and providers as specified in its contract with the Secretary.

(b) In its review, the PRO must determine (in accordance with the terms of its contract)—

(1) Whether the services and items are or were reasonable and medically necessary for the diagnosis and treatment of illness or injury or to improve functioning of a malformed body member, or (with respect to pneumococcal vaccine) for prevention of illness or (in the case of hospice care) for the palliation and management of terminal illness;

(2) Whether the quality of the services meets professionally recognized standards of health care;

(3) Whether those services and items provided or proposed to be provided on an inpatient basis could, consistent with the provisionof appropriate medical care, be effectively provided more economically on an outpatient basis or in an inpatient health care facility of a different type;

(4) Through DRG validation, the validity of diagnostic and procedural information supplied by the hospital;

(5) The completeness, adequacy and quality of hospital care provided;

(6) The appropriateness of hospital admissions and discharges; and

(7) The appropriateness of care provided in the hospital setting for which additional payment is sought under section 1886(d)(5); i.e. outliers.

The PRO must also perform other duties, functions, and responsibilities as required by HCFA.

(c) On the basis of the review specified under paragraphs (b)(1), (3), (4), (5), (6) and (7) above, the contracting organization must determine whether payment may be made for these services. The PRO must review at least a random sample of hospital discharges each quarter and submit new diagnostic and procedural information to the Medicare fiscal intermediary or carrier if it determines that the intitial information was incorrect.

(d) The regulations in this subpart apply to review conducted by a PRO and its subcontractors.

§ 466.72 Notification of PRO designation and implementation of review.

(a) *Notice of HCFA's decision.* HCFA will send written notification of a PRO contract award to the State survey agency and Medicare fiscal intermediaries and carriers. The notification will include the effective dates of the PRO contract and specify the area and types of health care facilities to be reviewed by the PRO. The PRO must make a similar notification when review responsibilities are subcontracted.

(b) *Notification to health care facilities and the public.* As specified in its contract with HCFA, the PRO must—

(1) Provide timely written notification to each health care facility scheduled to come under review, that specifies the date and manner in which the PRO proposes to implement review, and the information to be furnished by the facility to each Medicare beneficiary upon admission as specified in § 466.78(c) of this part.

(2) Publish a notice in at least one local newspaper of general circulation in the PRO area, that states the date the PRO will assume review responsibilities and lists each area health care facility to be under review. The PRO must indicate that its plan for the review of health care services as approved in its contract with HCFA is available for public inspection in the PRO's business office (including address, telephone number and usual hours of business).

§ 466.74 General requirements for assumption of review.

(a) A PRO must assume review responsibility in accordance with the schedule, functions and negotiated objectives specified in its contract with HCFA.

(b) A PRO must notify the appropriate Medicare fiscal intermediary or carrier of its assumption of review in specific health care facilities no later than five working days after the day that review is assumed in the facility.

(c) A PRO must maintain and make available for public inspection at its principal business office—

(1) A copy of each agreement with Medicare fiscal intermediaries and carriers;

(2) A copy of its currently approved review plan that includes the PRO's method for implementing review; and

(3) Copies of all subcontracts for the conduct of review.

(d) A PRO must not subcontract with a facility to conduct any review activities except for review of quality of care. The PRO may subcontract with a non-facility organization to conduct review in a facility.

(e) With respect to the items and services it reviews, a PRO must determine if a facility knew or should have known that the items or services in question were not covered and, therefore, whether limitation of liability (section 1879 of the Act) applies to initial determinations.

(f) A PRO must make its responsibilities under its contract with HCFA, primary to all other interests and activities that the PRO undertakes.

§ 466.76 Cooperation with health care facilities.

Before implementation of review, a PRO must make a good faith effort to discuss the PRO's administrative and review procedures with each involved health care facility.

§ 466.78 Responsibilities of health care facilities.

(a) Beginning on October 1, 1983, a hospital seeking payment for services provided to Medicare beneficiaries must maintain an agreement with a PRO if there is a PRO in the area in which the hospital is operating. Beginning October 1, 1984, every hospital seeking payment for services provided to Medicare beneficiaries must maintain an agreement with a PRO operating in the area which the hospital is located. These agreements must provide for the PRO review specified in § 466.70(b).

(b) Health care facilities that submit Medicare claims must cooperate in the

assumption and conduct of PRO review. Facilities must—

(1) Allocate adequate space to the PRO for its conduct of review at the times the PRO is conducting review;

(2) Provide patient care data and other pertinent data to the PRO at the time the PRO is collecting review information that is required for the PRO to make its determinations including, when review is performed away from the facility, photocopying and delivering (at no charge to the PRO) all required information to the PRO within 30 days of such a request. When the PRO is performing post-admission, preprocedure review, facilities must, except when a procedure must be performed on an emergency basis, provide to the PRO before the procedure is performed, all required information;

(3) Inform Medicare beneficiaries at the time of admission, in writing, that the care for which Medicare payment is sought will be subject to PRO review and indicate the potential outcomes of that review. Furnishing this information to the patient does not constitute notice for the purpose of removing a beneficiary's favorable presumptive status with respect to Section 1879 of the Social Security Act (a patient cannot reasonably be expected to know when care is not covered solely on the basis of this notice);

(4) Issue denial notices, when authorized by the PRO in an agreement;

(5) Assure, in accordance with the provisions of its agreement with the PRO, that each case subject to preadmission review has been reviewed and approved by the PRO before admission to the hospital;

(6) Agree to accept financial liability for any admission subject to preadmission review that has either not been reviewed by the PRO and is subsequently determined to be not medically necessary or inappropriate, or has been denied by the PRO as a result of preadmission review and where the hospital has been provided notice in accordance with its agreement with the PRO; and

(7) Agree that, if the hospital admits a case subject to preadmission review without certification, the case, must receive retrospective prepayment review, according to the review priority established by the PRO.

§ 466.80 Coordination with Medicare fiscal intermediaries and carriers.

(a) Procedures for MOUs. The Medicare fiscal intermediary or carrier must have a written memorandum of understanding with the PRO. The PRO must take the initiative with the fiscal intermediary or carrier in developing the MOU. The following steps must be taken in developing the MOU.

(1) The PRO and the fiscal intermediary or carrier must negotiate in good faith in an effort to reach written agreement. If they cannot reach agreement, HCFA will assist them in resolving matters in dispute.

(2) The PRO must incorporate its adminstrative procedures into an MOU with the fiscal intermediary or carrier and obtain approval by HCFA, before it makes conclusive determinations for the Medicare program, unless HCFA finds that the fiscal intermediary or carrier has—

(i) Refused to negotiate in good faith or in a timely manner; or

(ii) Insisted on including in the MOU, provisions that are outside the scope of its authority under the Act.

(b) *Content of MOU.* The MOU must include procedures for—

(1) Informing Medicare fiscal intermediaries and carriers of all initial determinations and revisions of initial determinations as a result of reconsideration and all approvals and denials with respect to cases subject to preadmission review and outlier claims in hospitals under a prospective payment system for health care services and items;

(2) Exchanging data or information;

(3) Modifying the procedures when additional review responsiblity is authorized by HCFA; and

(4) Any other matters that are necessary for coordination of functions.

(c) *Action by HCFA.* (1) Within the time specified in its contract, the PRO must submit to HCFA for approval its agreement with the Medicare fiscal intermediaries and carriers, or if an agreement has not been established, the PRO's proposed administrative procedures, including any comments by the Medicare fiscal intermediaries and carriers.

(2) If HCFA approves the agreement or the administrative procedures (after a finding by HCFA as specified in paragraph (a) (2) of this section, the PRO may begin to make determinations pursuant to its contract with HCFA.

(3) If HCFA disapproves the agreement of procedures, it will—

(i) Notify the PRO and the appropriate fiscal agents in writing, stating the reasons for disapproval; and

(ii) Require the PRO and fiscal intermediary or carrier to revise its agreements or procedures.

(d) *Modification of agreements.* Agreements or procedures may be modified, with HCFA's approval—

(1) Through a revised agreement with the fiscal intermediary or carrier; or

(2) In the case of procedures, by the PRO, after providing opportunity for comment by the fiscal intermediary or carrier.

(e) *Role of the fiscal intermediary.* (1) The fiscal intermediary will not pay any claims for those cases which are subject to preadmission review by the PRO, until it receives notice that the PRO has approved the admission.

(2) A PRO's determination that an admission is medically necessary is not a guarantee of payment by the fiscal intermediary. Medicare coverage requirements must also be applied.

§ 466.82 Continuation of functions not assumed by PROs.

Any of the duties and functions required of a PRO under Part B of Title XI of the Act for which a PRO has not assumed responsibility under this contract with HCFA must be performed in the manner and to the extent othewise provided for under the Act or in regulations.

§ 466.83 Initial denial determinations.

A determination by a PRO under this subpart is an initial denial determination and is appealable under Part 473 of this chapter.

§ 466.84 Conclusive effect of PRO initial determinations.

A PRO determination is final and binding unless it is reconsidered or revised in accordance with the procedures in Part 473 of this chapter.

§ 466.86 Correlation of Title XI functions with Title XVIII functions.

(a) *Payment determinations by Medicare fiscal intermediaries and carriers.* (1) PRO determinations under section 1154(a)(1) of the Act with regard to the reasonableness, medical necessity, and appropriateness of placement at an acute level of patient care as defined in section 1861 of the Act, are conclusive for payment purposes with regard to those medical issues under sections 1814(a) (4), (5) and (6), 1862(a) (1) and (9). Reviews with respect to those determinations must not be conducted, for purposes of payment, by Medicare fiscal intermediaries or carriers except as outlined in paragraph (c) of this section.

(2) PROs will make determinations as to the appropriateness of the location in which procedures are performed. A procedure may be medically necessary but will be denied if the PRO determines that it could, consistent with the provision of appropriate medical care, be effectively provided more economically on an outpatient basis or

in an inpatient health care facility of a different type.

(3) PRO determinations under section 1879(a) of the Act are also conclusive for payment purposes.

(b) *Utilization review activities.* PRO review activities under sections 1154(a)(1)(A) and (C) of the Act are in lieu of the utilization review activities required of health care institutions under section 1861(e)(6), 1861(j)(B) and (12), 1861(k) and 1865 of the Act.

(c) *Coverage.* (1) Nothing in paragraphs (a)(1) and (2) of this section shall be construed as precluding HCFA or a Medicare fiscal intermediary or carrier, in the proper exercise of its duties and functions, from reviewing claims to determine:

(i) In the case of items or services not reviewed by a PRO, whether they meet coverage requirements of Title XVIII relating to medical necessity, reasonableness, or appropriateness of placement at an acute level of patient care; or

(ii) Whether any claim meets coverage requirements of Title XVIII relating to issues other than medical necessity, reasonableness or appropriateness of placement at an acute level of patient care.

(2) Medical fiscal intermediaries and carriers are not precluded from making payment determinations with regard to coverage determinations in paragraphs (i) and (ii) above.

(d) *Survey, compliance and assistance activities.* PRO review and monitoring activities are in lieu of the survey, compliance and assistance activities required of State survey agencies under section 1864(a) with respect to sections 1861(e)(6), 1861(j)(8), 1861(j)(12), and 1861(k) of the Act, and activities required of intermediaries and carriers under sections 1816(b)(1)(B) and 1842(a)(2)(A) and (B) of the Act.

(e) *Review and appeals activities.* Any reviews, appeals, and notifications of PRO determinations specified under sections 1154(a)(3) and 1155 of the Act are in lieu of reveiws, appeals and notifications specified under sections 1842(b)(3)(C) and 1869(b) of the Act with respect to issues of reasonableness, medical necessity, allowability and appropriate level of care, or where the review, appeal or notification relates to action by a PRO under section 1979 of the Act.

§ 466.88 Examination of the operation and records of health care facilities and practitioners.

(a) *Authorization to examine records.* A facility claiming Medicare payment must permit a PRO or its subcontractor to examine its operation and records (including information on costs and charges) pertinent to health care services provided to Medicare beneficiaries as necessary for the PRO or its subcontractor to—

(1) Perform review functions including DRG validation, outlier review in facilities under a prospective payment system, corrective action and fraud and abuse activities;

(2) Evaluate cases that have been identified as deviating from the PRO norms and criteria, or standards; and

(3) Evaluate the capability of the facility to perform review functions under a subcontract with the PRO.

(b) *Records of non-Medicare program patients.* A PRO may not examine the records of non-Medicare patients unless specifically authorized to do so by the facility or practitioner, or by HCFA under sections 1815 and 1833 of the Act.

(c) *Conditions of examination.* When examining a facility's operation or records the PRO must—

(1) Examine only those operations and records (including information on costs and charges) required to fulfill the purposes of paragraph (a) of this section;

(2) Cooperate with agencies responsible for other examination functions under Federal or Federally assisted programs in order to minimize duplication of effort;

(3) Conduct the examinations during reasonable hours; and

(4) Maintain in its principal office written records of the examination of the facility.

§ 466.90 Lack of cooperation by a health care facility or practitioner.

(a) If a health care facility or practitioner refuses to allow a PRO to enter and perform the duties and functions required under its contract with HCFA, the PRO may—

(1) Determine that the health care facility or practitioner has failed to comply with the requirements of section 1156(a)(3) of the Act as amended and report the matter to the HHS Inspector General; or

(2) Issue denials for those claims it is unable to review, make the determination that financial liability will be assigned to the health care facility, and report the matter to the HHS Inspector General.

(b) If a PRO provides a facility with sufficient notice and a reasonable amount of time to respond to a request for information about a claim, and if the facility does not respond timely, the PRO will deny the claim.

§ 466.92 General requirements for PRO review.

(a) *Basis for determination of appropriateness.* In the case of Medicare beneficiaries, the PRO must determine whether a particular level of care is appropriate in accordance with the level-of-care provisions in sections 1814, 1861 and 1862 of the Act, 42 CFR 409.10–409.18, 409.31–409.35, 405.1627(b), and pertinent guidelines issued by HCFA.

(b) *Coverage determinations.* A Medicare fiscal intermediary or carrier is not precluded, in the proper exercise of its duties and functions, from making coverage exclusion determinations which it is authorized to make under § 466.86(c). However, if a coverage determination is based on medical necessity, reasonableness, or appropriateness of placement at an acute level of patient care, the fiscal intermediary of carrier must use a PRO to make a finding of medical necessity, reasonableness, or appropriateness of the items or services in question if a PRO is conducting review pursuant to a contract with HCFA, and must abide by the PRO's determination.

§ 466.93 Opportunity to discuss proposed initial denial determination.

Before a PRO reaches an initial denial determination, it must—

(a) Promptly notify the provider and the patient's attending physician (or other attending health care practitioner) of the proposed denial; and

(b) Afford an opportunity for the provider and physician (or other attending health care practitioner) to discuss the matter with the PRO physician advisor and to explain the nature of the patient's need for health care services, including all factors which preclude treatment of the patient as an outpatient or in an alternative level of inpatient care.

§ 466.94 Notice of PRO initial denial determination.

(a) *Parties to be notified.* A PRO must provide written notice of a denial to—

(1) The patient, or if the patient is expected to be unable to comprehend the notice, the patient's next of kin, guardian or other representative or sponsor;

(2) The attending physician, or other attending health care practitioner;

(3) The facility; and

(4) The fiscal intermediary or carrier.

(b) *Content of the notice.* The notice must contain—

(1) The reason for the initial denial determination;

(2) For day outliers in hospitals, the date on which the stay or services in the

facility will not be approved as being reasonable and medically necessary or appropriate to the patients' health care needs;

(3) A statement informing each party or the representative of the right to request a reconsideration in accordance with the provisions of 42 CFR Part 473, Subpart B;

(4) The locations for filing a reconsideration request and the time period within which a request must be filed;

(5) A statement about who is liable for payment of the denied items or services under section 1879 of the Act; and

(6) A statement concerning the duties and functions of the PRO under the Act.

(c) *Timing of the notice.* The notice must be delivered to beneficiaries in the facility or mailed to those no longer in the facility, within the following time periods—

(1) For admission, on the working day after the initial denial determination;

(2) For continued stay (i.e., outliers in facilities under a prospective payment system), by the working day after the initial denial determination if the beneficiary is still in the facility, and within 3 days if the beneficiary has been discharged;

(3) For preprocedure review, before the procedure is performed;

(4) For preadmission review, before admission;

(5) If identification as a Medicare program patient has been delayed, within three working days of identification;

(6) For retrospective review, (excluding DRG validation and post procedure review), within three days of the denial determination; and

(7) For post-procedure review, within three days of the denial determination.

(d) *Notice to payers.* The PRO must provide prompt written notice of an initial denial determination to the Medicare fiscal intermediary or carrier.

(e) *Record of initial denial determination.*

(1) The PRO must document and preserve a record of all initial denial determinations for at least six years.

(2) The documentary record must include—

(i) The detailed basis for the initial denial determination; and

(ii) A copy of the notices of denial sent to all parties and identification of each party and the date on which the notice was mailed or delivered.

§ 466.96 Review period and reopening of denial determinations.

(a) The period during which a PRO or its subcontractor may review and deny payment must generally be within one year of the date of the claim containing the service or item in question.

(b) Denial deteminations may be made after one year but within four years of the date of the claim containing the service or item in question only if the HCFA Regional Administrator gives written approval.

(c) Except as provided in paragraph (e) of this section, a denial determination may not be made four years or more from the date of the claim containing the service or item in question.

(d) A determination may be reopened and revised by the PRO or any of its subcontractors—

(i) If additional information is received on the patient's condition;

(ii) If reviewer error occurred in interpretation or application of Medicare coverage policy or review criteria; or

(iii) If clerical error caused a denial determination.

(e) A determination may be reopened and revised at anytime, if the determination was obtained through fraud or a similar abusive practice irrespective of whether such a practice constitutes fraud.

§ 466.98 Reviewer qualifications and participation.

(a) *Peer review by physician.* (1) Except as provided in paragraph (a)(2) of this section, each person who makes an initial denial determination about services provided or proposed to be provided by a licensed doctor of medicine or osteopathy or by a doctor of dentistry must be respectively another licensed doctor of medicine or osteopathy or a doctor of dentistry with active staff privileges in one or more hospitals in the PRO area.

(2) If a PRO determines that peers are not avialable to make denial determinations, a doctor of medicine or a doctor of osteopathy may make such determinations for services ordered or performed by a doctor of medicine, doctor of osteopathy or doctor of dentistry.

(3) For purposes of paragraph (a)(1) of this section, individuals authorized to practice medicine in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands as "medical officers" may make determinations on care ordered or provided by their peers but not on care ordered or provided by licensed doctors of medicine or osteopathy.

(b) *Peer review by health care practioners other than physicians.* Health care practioners other than physicians may review services provided by other practitioners in the same professional field.

(c) *Persons excluded from review.* (1) A person may not review health care services or make denial determinations if he or she, or a member of his or her family—

(i) Participated in developing or executing the beneficiary's treatment plan;

(ii) Is a member of the beneficiary's family; or

(iii) Is a governing body member, officer, partner, 5 percent or more owner, or managing employee in the health care facility where the services were or are to be provided.

(2) A member of a reviewer's family includes a spouse (other than a spouse who is legally separated under a decree of divorce or separate maintenance), child (including a legally adopted child), grandchild, parent, and grandparent.

§ 466.100 Use of Norms and Criteria.

(a) *Use of norms.* As specified in its contract, a PRO must use national, or where appropriate, regional norms in conducting review to achieve PRO contract objectives. However, with regard to determining the number of procedures selected for preadmission review, a PRO must use national admission norms.

(b) *Use of criteria.* In assessing the need for and appropriateness of an inpatient health care facility stay, a PRO must apply criteria to determine—

(1) The necessity for facility admission and continued stay (in cases of day outliers in hospitals under prospective payment);

(2) The necessity for surgery and other invasive diagnostic and therapeutic procedures; or

(3) The appropriateness of providing services at a particular health care facilty or at a particular level of care. The PRO must determine whether the beneficiary requires the level of care received or whether a lower and less costly level of care would be as effective.

(c) *Establishment of criteria and standards.* For the conduct of review a PRO must—

(1) Establish written criteria to be used in review based upon typical patterns of practive in the PRO area, or national criteria where appropriate; and

(2) Establish written criteria and standards to be used in conducting quality review studies.

(d) *Variant criteria and standards.* A PRO may establish specific criteria and standards to be applied to certain locations and facilities in the PRO area if the PRO determines that—

(1) The patterns of practice in those locations and facilities are substantially different from patterns in the remainder of the PRO area; and

(2) There is a reasonable basis for the difference which makes the variation appropriate.

§ 466.102 Involvement of health care practitioners other than physicians.

(a) *Basic requirement.* If the PRO reviews care and services delivered by health care practitioners other than physicians, it must consult with the peers of those practitioners in the process of review of care and services provided by those practitioners unless—

(1) The PRO has been unable to obtain a roster of peer practitioners available to perform review; or

(2) The practitioners are precluded from performing review because of participation in the treatment of the patient or of financial interest in the health care facility as described in § 466.98(c).

(b) *Peer involvement in medical necessity or quality review.* If the provisions of paragraphs (a) (1) and (2) of this section, do not apply, the PRO must assure that in determinations regarding medical necessity of services or the quality of the services they provide, these practitioners are invovled in—

(1) Developing PRO criteria and standards;

(2) Selecting norms to be used; and

(3) Developing review mechanisms for care provided by their peers.

(c) *Peer involvement in review.* A denial determination of services provided by a health care practitioner other than a physician must be made only after consultation with a peer of that practitioner, if the provisions of (a) (1) and (2), of this section, do not apply. Denial determinations must be made only by a physician.

(d) *Peer involvement in quality review studies.* In the conduct of quality review studies, peer practitioners must be invovled in the design of studies, development of criteria, and actual conduct of studies involving their peers.

(e) *Consultation with practitioners other than physicians.* To the extent practicable, the organization must consult with nurses and other professional health care practitioners (other than physicians defined in 1861(r) (1) and (2) of the Act) and with representatives of institutional and noninstitutional providers with respect to the PRO's responsibility for review.

§ 466.104 Coordination of activities.

A PRO must coordinate activities (including information exchanges) that are consistent with economical and efficient PRO review among—

(a) Medicare fiscal intermediaries and carriers;

(b) Other PROs; and

(c) Other public or private review organizations as may be appropriate.

Subparts D and E—[Removed]

G. Subparts D and E are removed.

(Catalog of Federal Domestic Assistance Program No. 13.714; Medical Assistance Program No. 13.773; Medical—Hospital Insurance; No. 13.774; Medicare—Supplementary Medical Insurance)

Dated: January 11, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: May 7, 1984.

Margaret M. Heckler,

Secretary.

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42 CFR Part 473

[HSQ-111-P]

Medicare Program, Utilization and Quality Control Peer Review Organization (PRO) Reconsiderations and Appeals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION. Proposed rule.

SUMMARY: This proposed rule would implement that portion of the Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248) addressing reconsiderations and appeals of PRO denial determinations. The proposed regulations would establish procedures for (1) a PRO to reconsider both its denial determinations regarding the medical necessity, reasonableness and appropriateness of health care service furnished or proposed to be furnished to a Medicare beneficiary in a health care institution and the application of the limitation of liability provision; (2) administrative appeals to the Department following a PRO reconsidered determination; and (3) judicial review following an administrative hearing.

DATE: To assure consideration, comments should be received by August 16, 1984.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-111-P, P.O. box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or to Room 132 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publicaton, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, D.C. 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: Kay Terry, (301) 594-7910.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, Pub. L. 97-248) amended Part B of Title XI of the Social Security Act (the Act) to establish the Utilization and Quality Control Peer Review Organization (PRO) program. This program, when fully implemented, will replace the existing Professional Standards Review Organizaton (PSRO) program. Initially, PROs will assume responsibility for the review of hospital inpatient health care services and items for which payment may be made by Medicare and may also review other services. Congress created the PRO program to redirect, simplify and enhance the cost-effectiveness and efficiency of peer review of services reimbursed by Medicare. PRO review will determine whether those services and items are reasonable and medically necessary, are furnished at the appropriate level of care, and are of a quality that meets professionally recognized standards. Additionally, a PRO must determine whether services and items provided on an inpatient basis could be effectively provided more economically on an outpatient basis or in a different type of inpatient facility.

Title VI of the Social Security Amendments of 1983, Pub L. 98-21, added another review function. Under the new section 1886 (d) of the Act Medicare payment for inpatient operation costs will be based on a fixed amount, determined in advance for each case, according to which diagnosis-related code (DRG) will be assigned to a case. In addition, Pub. L 98-21 added section 1886(a)(1)(F) to the Act, which requires PRO review of the validity of

the diagnostic and procedural informaton supplied by the hospital and used by the intermediary to assign the DRG.

Several other proposed rules, one final rule, and one other document concerning PROs have recently been or soon will be published in the Federal Register. These documents are:

- Area Designations and Definitions of Eligible Organizations (February 27, 1984; 49 FR 7202 (final rule) and 7209 (final notice)).
- Solicitation of comments on PRO program scope of work (August 25, 1983; 48 FR 39160).
- Assumption of Responsibilities and Review Functions and Coordination of Medicaid with PROs.
- Imposition of Sanctions on Health Care Practitioners and Providers of Health Care Services (April 18, 1984; 49 FR 15233).
- Acquisition, Protection and Disclosure of PRO Information (April 16, 1984; 49 FR 14954).
- Prospective Payment for Medicare Inpatient Hospital Services (September 1, 1983; 48 FR 39752 and January 3, 1984; 49 FR 234).

It should be noted that the provisions of this proposed rule may be revised to bring them into conformance with amendments to the rules implementing section 1879 of the Act, which concerns the limitation on liability when Medicare claims are disallowed on certain grounds. Proposed amendments are being developed and will be published for comment.

II. Statutory Provisions

Under section 1154(a)(3) of the Act, "Functions of Peer Review Organizations," a provider or practitioner who is dissatisfied with an initial PRO determination that services furnished or proposed to be furnished are not reasonable, necessary, or delivered in the most appropriate setting, is entitled to an opportunity for discussion and review with the PRO that made the initial determination.

Section 1155 of the Act, "Right to Hearing and Judicial Review," sets forth the appeals process applicable to Medicare determinations made by a PRO. Section 1155 of the Act provides that—

- A beneficiary, practitioner, or provider dissatisfied with a PRO determination is entitled to a reconsideration by that PRO.
- If the PRO reconsideration is adverse to the beneficiary and the amount in controversy is at least $200, the beneficiary is entitled to a hearing by the Department to the same extent as provided in section 205(b) of the Act. (This differs from the $100 threshold in the PSRO statute.)
- If the amount in controversy is at least $2,000, the beneficiary is entitled to judicial review of the Department's final decision. (This threshold was set at $1;000 by the PSRO statute.)

III. Proposed Changes to Regulations

A. General Overview

The proposed rule reflects the Congressional intent of promoting an efficient, effective program by—

(1) Streamlining the reconsideration process without compromising the beneficiary's rights.

(2) Specifying the reconsideration issues under PRO jurisdiction.

(3) Setting deadlines for completing the PRO reconsideration and issuing the determination.

(4) Outlining minimum record retention times for the PRO.

B. Organization

(1) We are proposing to change the title of 42 CFR Part 473 from "Hearings and Appeals on PSRO Determinations to "Reconsiderations and Appeals". This change would allow us to maintain reconsideration and appeals regulations governing the PSRO program and to provide reconsideration and appeals regulations for the PRO program within a single part of the CFR.

(2) We would establish in 42 CFR Part 473 a new Subpart A—PSRO Reconsiderations and Appeals—that would include the current regulations governing PSRO reconsiderations and appeals, and we would add a new Subpart B—Utilization and Quality Control Peer Review Organization Reconsiderations and Appeals—to provide for the new PRO reconsiderations and appeals.

C. PRO Reconsiderations and Appeals

We would add the following regulations to implement portions of the legislation concerning reconsiderations and appeals:

(1) Dissatisfaction with PRO Determinations

The language of section 1155 of the Act is broad—any beneficiary, practitioner or provider who is "dissatisfied" with a PRO determination is granted the right to obtain a reconsideration. Although section 1155 of the Act specifies that there must be a specific dollar amount in controversy before a beneficiary is entitled to a hearing or judicial review, no specific amount in controversy is required to obtain a reconsideration. This is consistent with HCFA's interpretation of similar language describing the limitation of liability provision in section 1879(d) of the Act.

(2) Parties to a Reconsideration

Except as provided in the next section, any party to a PRO determination could also be a party involved in the reconsideration. This means that a party could be the beneficiary, the attending physician or other attending health care practitioner, or the health care institution.

(3) DRG Coding Errors

Effective with hospital cost reporting periods beginning on or after October 1, 1983, Medicare payment for inpatient operating costs will be based in part on amounts determined by the diagnosis related group (DRG) (currently there are 468 DRGs) to which the case is assigned.

For most hospitals, this system replaces the retrospective cost reimbursement system and the cost-per-case limits and rate of increase ceiling created by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248. The prospective payment system will apply to all Medicare participating hospitals except psychiatric, long-term (with an average stay greater than 25 days), children's, rehabilitation hospitals, and hospitals outside of the 50 States and the District of Columbia. Distinct-part rehabilitation and psychiatric units of acute care hospitals are also excluded.

During the course of validating patient-specific diagnostic and procedural coding, a PRO may determine that one or more of those codes reported by the provider are inaccurate, and the PRO will then submit new coding to the intermediary. If the new coding results in a different DRG, we would require a PRO to review its determination at the request of someone subject to a possible loss, that is, the provider or practitioner. We would not provide for a reconsideration of a PRO validation of the diagnostic and procedural coding when requested by a beneficiary because the beneficiary would not be subject to any loss. To allow this reconsideration would pose an unnecessary administrative burden not required by the Act.

(4) Other Issues for PRO Reconsideration

A party to an initial PRO determination who is dissatisfied with the determination would be entitled to a PRO reconsideration of whether the services that were furnished or proposed to be furnished—

- Are medically necessary, reasonable and appropriate, given the

diagnosis and circumstances under which they were or would be furnished; and

• Are furnished in an appropriate setting. If a PRO has determined that liability will not be waived under section 1879 of the Act for a noncovered furnished service, only the provider, practitioner or beneficiary who is liable would be entitled to a reconsideration of the determination. In addition, a provider or practitioner would be entitled to a reconsideration under section 1879 of the Act when it is established that the beneficiary is not pursuing his or her appeal rights.

In addition, section 1154(a)(2)(B) allows the PRO the option in certain instances of determining if up to two more days are needed for arranging post-discharge care in cases not paid under the prospective payment system. For cases paid under the prospective payment methodology, the grace day provision can be applied to outlier days only. A determination by the PRO regarding the nonapplicability of this "grace day" provision is entirely within the discretion of the PRO and, therefore, would not be subject to a reconsideration. This is because no denial of Medicare coverage has taken place if a PRO has determined that extra time is not needed for the arranging of post-discharge services.

(5) Timing of Request for Reconsideration

We would follow the existing Medicare policy concerning the deadlines for filing requests for reconsiderations (60 days after the date of receipt of notice of the initial determination) and appeals (60 days after the date of receipt of notice of the reconsidered determination). The time for filing administrative appeals may be extended for good cause as described in § 473.30. That is, a party who has a right to a reconsideration who has missed the deadline for filing, may request an extension of the deadline. This written request must give the reason for missing the deadline.

One exception to the above time period for filing a request for reconsideration would occur in the case of a denial as a result of preadmission review. If, as a result of the denial, the beneficiary does not enter the institution, the request for reconsideration must be received within 3 working days of the date of the receipt by the beneficiary of the initial denial notice, to ensure that a priority review takes place. A priority review would be conducted within 3 working days of receipt by the PRO of the request for reconsideration. If the beneficiary does not file the request within 3 working days, the PRO would be required to complete the reconsideration within 30 calendar days of receipt of the request.

In determining whether a party had good cause for missing a deadline, the reconsideration reviewer or the administrative hearing officer will consider—

(1) Circumstances that cause the party to miss the deadline;

(2) Whether the party was mislead by our actions (or the PRO's actions); and

(3) Whether the party did not understand the requirement to file a timely request.

(6) Submitting a Reconsideration Request

Our primary consideration in this section is to ensure maximum ease for a beneficiary to submit a request for reconsideration. In considering places for filing, we were faced with the problem of balancing convenience for a party against a more secure submission process. Although we believe that several submittal points may create a potential for misdirected requests and delays, we believe the potential benefits to the beneficiaries outweigh our concerns. Therefore, we are proposing that a beneficiary may submit a request for reconsideration to the PRO, a PRO representative (who is generally a review coordinator or physician advisor) at the health care institution, any Social Security office, or any office of the Railroad Retirement Board, if the beneficiary is a railroad retirement beneficiary. However, we think that it's appropriate to require a provider or practitioner to submit its request for a reconsideration directly to the PRO or PRO subcontractor that made the initial determination. We believe that this is appropriate because a provider or practitioner will be familiar with the reconsideration process through routine contacts with the PRO or PRO subcontractor.

Therefore, a provider or practitioner would not need the same type of broad access to the reconsideration process that may be appropriate for a beneficiary.

(7) Date of Receipt of Request for Reconsideration

We propose that the date of receipt of the request for reconsideration be the date the notice was delivered to the PRO, or if the date of receipt can not be determined, 5 calendar days after the postmark on the request. We are proposing that each PRO establish a method to validate the date that the request for reconsideration is received.

(8) Opportunity for a Beneficiary to Obtain and Submit Information

During the reconsideration process a beneficiary would be able to gain access to that portion of his or her medical records upon which the denial determination was based, and if a beneficiary so wishes, to submit additional information. If the beneficiary requests copies of records, these will be available at a nominal cost (that is, the cost of photocopies).

In addition, the beneficiary may examine all information upon which the adverse determination was based. However, the PRO would not provide access to its deliberations nor would the PRO identify its review coordinators, physician consultants, or other consultants who assisted in the review of the case. Other rules regarding the confidentiality of PRO records are being proposed in a separate document and would be located at 42 CFR 476.132.

(9) Qualifications of Organizations and Individuals Who May Participate in the Reconsideration of an Initial Determination

We would allow a PRO to subcontract the reconsideration of an initial determination only to an organization that is qualified to make the initial determination, as outlined below. This could include the organization that made the initial determination as a PRO subcontractor. In addition, we propose that an individual would be qualified to reconsider an initial determination only if that individual is qualified to make the initial determination.

(a) *Organizations Excluded from Participating in PRO Reviews.* Section 1153(c)(1) of the Act permits a PRO to subcontract some or all of its review functions. The Conference Committee report states that a PRO may subcontract (i.e., delegate) review functions to a facility, if the PRO finds that the facility will effectively and efficiently review itself. H.R. Rep. No. 97-760, 97th Cong., 2nd Sess. 443 (1982). The PRO must make such a determination in accordance with the terms of its contract with HCFA. However, after the passage of TEFRA, Pub. L. 98-21 changed dramatically the method for Medicare payment to most acute care hospitals. Instead of making retroactive cost reimbursement for each covered service, Medicare now pays a single, predetermined discharge rate resulting from each covered admission. Thus, the PROs, the focus of review is the admission, and the financial implications of a review have increased sharply. We believe review (other than

quality review) performed by a facility for itself or any other facility for Medicare payment would be a conflict of interest and would, therefore, be both inefficient and ineffective. However, a PRO may subcontract with a non-facility organization to conduct a reconsideration of an initial determination.

(b) *Individuals Excluded from Participating in PRO Reconsiderations.* We propose to provide that neither a reconsideration reviewer nor a member of the reviewer's family may—

(i) Have participated in developing or executing the beneficiary's treatment plan;

(ii) Be a member of the beneficiary's family; or

(iii) Be a governing body member, officer, partner, 5 percent or more owner, or managing employee in the health care facility where the services were furnished or proposed to be furnished.

A member of the reviewer's family would include a spouse (other than a spouse who is legally separated under a decree of divorce or separate maintenance), child (including a legally adopted child), grandchild, parent, and grandparent.

(c) *Peer Review.* Because the law stresses peer review, we would generally require that an individual who reconsiders the initial determination be a professional peer of the practitioner under review.

(i) Services ordered or provided by a doctor of medicine, doctor of osteopathy, or doctor of dentistry may be denied only by another doctor of medicine, doctor of osteopathy, or doctor of dentistry, respectively, who has active admitting privileges at one or more hospitals in the PRO area. However, where a PRO determines that peer practitioners are not available to make such decisions (for example, the lack or limited number of peers prevents review from being conducted efficiently or without actual or potential conflict of interest), a doctor of medicine or doctor of osteopathy may make such decisions for services ordered or performed by a doctor of medicine, doctor of osteopathy, or doctor of dentistry. For purposes of this paragraph, individuals licensed to practice as "medical officers" in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands may review the care provided by their peers, but not the care provided by doctors of medicine or osteopathy.

(ii) For reconsideration of services furnished or proposed to be furnished by a health care practitioner who is not a physician, a physician must make the reconsideration determination after consultation with a peer of the practitioner, if one is available.

All of these qualifications and limitations for a reconsideration reviewer would be the same as those for the initial reviewer.

We have not set forth stringent requirements for the reconsideration process itself because this might result in a serious administrative burden on some PROs. We would require, unless not practicable, that reviewer who reconsiders the initial determination not be the individual who made the initial determination. We recognize that for some PROs it may not always be practicable to hire a peer reviewer who would be someone other than the individual who made the initial determination.

(10) Timing of Reconsideration Review

To keep the financial liability of the patient who requests a reconsideration to a minimum, we are proposing the following deadlines for a PRO to complete it reconsideration:

(a) If the beneficiary is still an inpatient in the hospital for the stay in question at the time the request for reconsideration is received by the PRO, we would require that the PRO complete the reconsideration review and issue a determination within 3 working days of receipt of the request for reconsideration.

(b) For a beneficiary who is an inpatient of a skilled nursing facility (SNF) for the stay in question, we would set a limit of 10 working days for completion of the reconsideration process beginning with the date of receipt of the request for reconsideration.

(c) If the beneficiary is no longer an inpatient of a hospital or SNF for the stay in question or if the services in question were ambulatory or noninstitutional in nature, we propose that the reconsideration be completed within 30 calendar days from the date of receipt of the request for reconsideration.

(d) In the case of a preadmission denial, the reconsideration must be completed within 3 working days of the PRO's receipt of the request even though the beneficiary is not an inpatient, but only if the beneficiary files the request within 3 workings of the beneficiary's receipt of the PRO's initial determination. We believe that this short-turn around time is necessary because the beneficary may delay seeking the hospital admission until after the reconsideration determination is issued.

(e) If the beneficiary does not file timely for an expedited reconsideration as discussed above in section (5) and in this section, the PRO would have to complete the reconsideration within 30 calendar days of receipt of the request for reconsideration.

(f) We would require a PRO to complete its reconsideration for a provider or practitioner as soon a practicable. This is because medical care that is provided after a denial and before a reconsidered determination will generally be the responsibility of the beneficiary.

We believe that these proposed timeframes are reasonable and fair to both the parties and the PRO.

(11) Evidence at Reconsideration

We propose that the PRO must consider the medical records and any other information that was used to make the initial determination and any information submitted by a party.

A party would be allowed to submit additional relevant information to be considered by the PRO in making its reconsideration.

(12) Notice of a Reconsidered Determination

We are proposing that the written notice to the parties of the reconsideration contain at least the following information:

- The basis for the reconsidered determination.
- A detailed rationale for the reconsidered determination.
- A brief statement explaining who is liable for payment of the services.
- An explanation of how to request a hearing before an administrative law judge. This explanation would include the amount in controversy, the deadline for filing for a hearing, information that must be included in the request, and the addresses where the request could be sent.
- Adequate information to allow the intermediary or carrier to locate the claim file. This would inlude the name of the beneficiary, the Health Insurance Claim Number, date of admission, and dates or services for which Medicare payment will not be made.

(13) Record of Reconsideration

We would require a PRO to keep a copy of the record of its reconsideration for at least four years. If an issue in the reconsidered determination is still in litigation at the end of this period, the record must be maintained until the litigation has been completed and the time period for filing all appeals has passed.

The record would include the initial determination, the basis for the initial determination, documentation of the date of request for reconsideration, the notice of the reconsidered determination (which includes the detailed basis for the reconsidered determination), medical records, and other information used in the reconsideration process, and documentation of the mailing of the reconsidered determination.

This record would be available only to a party, the administrative law judge, the Social Security Administration Appeals Council, the intermediary or carrier, the Department's representatives, and the Federal court that is hearing the appeal. (Once a document is filed with a court, of course, it is not possible for us to give assurances that documents will not become available to others.)

(14) Finality of Reconsideration

The PRO would promptly notify the Medicare carrier or intermediary of its reconsidered determination so that any corrections to payment can be made. It should be noted that, where payment has not already been made, it will not be made for a claim until the reconsidered determination is completed.

The reconsidered determination would be final and binding upon all parties unless a subsequent appeal results in a change in the decision, or the determination is later reopened and revised in accordance with rules concerning the reopening and revision of reconsidered determinations located at § 473.80.

(15) Scope of Administrative Review

Section 1155 of the Act precludes a provider or practitioner from further appeals of the issues of medical necessity, reasonableness and appropriateness beyond the reconsidered determination. This is similar to our current PSRO rule that provides an administrative hearing for the beneficiary only.

It is our intention to have PROs make all limitation of liability determinations related to denials of inpatient services under their review. (In cases where an intermediary makes the initial determination, the intermediary will continue to make the limitation of liability determination.) This is different from our current rule where PSROs only make recommendations to the fiscal intermediary regarding the application of the limitation of liability provision, and the fiscal intermediary actually makes the final determination concerning limitation of liability. This change would allow for administrative ease, would be less costly than the current practice under the PSRO regulations because only one entity would perform the review of the records, and would be less confusing to the beneficiary. In accordance with the limitation of liability provisions in section 1879 of the Act, the provider or practitioner who has been found liable could still appeal the issue of knowledge about the noncovered items or services but only if HCFA has determined that the beneficiary will not pursue his or her appeal rights.

However, consistent with section 1155 of the Act, the provider or practitioner could not base its appeal of a determination under the limitation of liability provision in section 1879 of the act on the issues of medical necessity, reasonableness, or appropriateness. If a provider or practitioner were to do this, the appeal would be dismissed by the administrative law judge because the only administrative appeal rights open to the provider or practitioner would be associated with the limitation of liability determination (See 42 CFR 405.704(c)).

(16) Amount in Controversy

Section 1155 of the Act provides for a hearing by an administrative law judge to review a PRO reconsidered determination if the amount in controversy is $200 or more. However, a hearing solely about the limitation of the provider's or practitioner's liability would be available (under Section 1879 of the Act) if $100 or more is in controversy.

We are proposing that the administration law judge would determine whether the threshold is met by—

(a) Estimating the amount that would have been charged had the services been furnished; or

(b) If the services have been furnished, computing the amount in controversy in accordance with § 405.740, Principles for determining the amount in controversy.

(17) Submitting a Request for Hearing

A party could file a request for hearing at:

- The office of the PRO, its subcontractor that issued the reconsidered decision, or a PRO representative at the health care facility;
- Any Social Security Administration District Office;
- Any office of the Office of Hearings and Appeals of the Social Security Administration; or
- Any office of the Railroad Retirement Board, if the party is a railroad retirement beneficiary.

(18) Timing of Request for a Hearing by an Administrative Law Judge

Under this proposal, a request for a hearing must be filed within 60 days of the date of the beneficiary's receipt of the PRO's notice of the reconsidered determination unless the time is extended for good cause. The rules for establishing good cause for extending the time limit for filing for a hearing would be the same as for extending the time limit for requesting reconsideration, under section II (C)(5), Timing of Request for Reconsideration, of this preamble.

(19) Utilization of Medicare Hearing Procedure

If not inconsistent with specific procedures in this subpart, the medicare hearing procedures in 42 CFR Part 405, Subpart G—Reconsiderations and Appeals Under the Hospital Insurance Program, would apply to hearings and appeals of PRO determinations under section 1154 of the Act with respect to both part A and Part B of medicare. This is because Subpart G implements section 1869(b) of the Act which provides for a hearing for an individual who is dissatisfied with certain determinations. Section 1869(b) of the Act incorporates section 205(b) of the Act (including its hearing and appeals procedures). Since the section 1155 hearing provisions also incorporate section 205(b), we would use the Subpart G hearing and appeals procedures instead of creating duplicate procedures.

However, we would use the usual Medicare rules for determinations and hearings and appeals procedures for PRO determinations involving limitation of liability under section 1879 of the Act. (See 42 CFR 405.330 through 405.332 for initial determinations, 42 CFR 405.704(c) for Part A appeals, and § 405.803(b) for the Part B appeals.) This is because a PRO's limitation of liability determination is made solely under the jurisdiction of section 1879 of the Act, not section 1154 of the Act.

In § 473.56, we have also identified a few addtional hearing procedures that would apply to an appeal of a PRO determination unless inconsistent with a specific provision of 42 CFR part 473, Subpart B-Utilization and Quality Control Peer Review Reconsiderations and Appeals.

(20) Appeals Council and Judicial Review

If a party is dissatisfied with the hearing decision by the administrative law judge or with the dismissal of a hearing request, the party could request

that the Appeals Council review that ruling. Though there is a right to request Appeals Council review, there is no right to the review itself. If the Appeals Council grants that request or decides to review a case on its own notion, it would either issue a decision or remand the case to the administrative law judge for further action.

A party could request Appeals Council review by submitting a written request along with any documents or other evidence that the party wishes to have the Appeals Council consider. A party would have to submit this request within 60 days after the date the party receives notice of the hearing decision or dismissal. The Appeals Council would extend the time period for requesting review if it finds that the party had good cause for missing the deadline. Reasons that would justify good cause are explained in § 473.30.

The Appeals Council would review a case if—

(a) There appears to be an abuse of discretion by the administrative law judge;

(b) There is an error of law;

(c) The action, findings or conclusions of the administrative law judge are not supported by substantial evidence; or

(d) There is a broad policy or procedural issue that may affect the general public interest.

These grounds for Appeals Council review are located in 20 CFR 404.970, Cases the Appeals Council will review.

If new and material evidence is submitted with the request for review, the Appeals Council would evaluate the entire record. The Appeals Council would then review the case if it finds that the administrative law judge's action, finding, or conclusion is contrary to the weight of the evidence currently in the record.

Section 1155 of the Act provides for judicial review of the Secretary's final decision concerning a beneficiary's claim if $2,000 or more is still in controversy. However, if the provider or practitioner requests judicial review solely about the limitation of the provider or practitioner's liability under section 1879, the amount in controversy need only must be $1,000. (It should be noted that the hearing procedures for limitation of liability do not provide for judicial review of part B determinations. (For judicial review, a party must file an action in a Federal district court within 60 days after the party receives notice of the Appeals Council's action.

(21) Reopening and Revision of a Reconsidered Determination

Under proposed § 473.50, if a determination is final and the time for filing further appeals has passed, we would allow reconsiderations to be reopened and revised by the PRO either on its own motion or at the request of a party. The PRO could reopen its reconsidered determination within one year of the initial determination only if—

(a) The PRO receives new material evidence;

(b) There is a clerical error in the notice of the reconsidered determination; or

(c) There is an error apparent on the face of the evidence upon which the reconsidered determination was based.

In addition, a PRO may reopen a reconsidered determination at any time, if it was obtained through fraud or a similar abusive practice that would not support a formal finding of fraud.

A Subcontractor would be allowed to reopen and revise its own reconsidered determinations only with specific written concurrence of the PRO.

We believe that the decision to reopen or revise must be left to the descretion of the PRO, because section 1154(a)(2) of the Act provides that a PRO's determination is conclusive for Medicare payment purposes.

IV. Impact Analysis

A. Executice Order 12291

We have determined that these proposed regulations are not likely to result in an annual economic effect of $100 million or more, or meet other threshold criteria of section 1(b) of the Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" defined as one which would:

- Result in annual effect on the national economy of $100 million or more;
- Result in a major increase in costs or prices for consumer, any industries, any government agencies, or any geographic regions; or
- Have significant adverse effects one competition, employment, investment, productivity, innovation or on the ability of United States—based enterprises to compete with foreign—based enterprises in domestic or import markets.

As noted above, this proposal is one of several efforts to promote a more efficient peer review program. Specifically, we propose to streamline the PRO reconsideration process primarily by not prescribing the details of the PRO reconsideration process. Our experience has shown that due to our stringent review instructions, the PRO reconsideration process has taken the form of an evidentiary hearing. This is a costly process as it can involve various professionals and numerous staff hours to complete the reconsideration review. We believe that our proposal, on the other hand would result in a reduction in program expenditures because of these proposed changes. We believe that savings can be achieved through the deletion of the requirement for professional consultation at the administrative hearing level and by having PROs make all limitation of liability determinations associated with their initial denials. These changes will allow for administrative ease and will also be less costly to the program.

At this time, we cannot estimate precisely the increase or decrease in the number of reconsiderations, administrative appeals and judicial reviews that will occur in FY 1984. We do not believe that this proposed rule will either encourage or discourage appeals. Since we assume that there will not be a significant incremental change in the number of reconsiderations and appeals, we conclude that this proposed rule is not likely to result in an annual economic effect that will meet any of the threshold criteria of the Order.

B. Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act of 1980, Pub. L. 96-354, that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities. The reason for this certification is that although the regulations would reduce the costs of the peer review reconsideration and appeals process, we do not expect the reduction to be significant.

We do not believe that providers would be significantly affected by these regulations because the total number of peer review reconsidered determinations and appeals currently average less than one reconsideration or appeal per provider. As noted above, we do not expect a significant incremental change in the number of reconsiderations and appeals in future fiscal years. Therefore, providers would not incur significant additional costs because of these provisions.

C. Paperwork Reduction Act of 1980

Sections 473.44 and 473.46 of this proposed rule contain information collection requirements. As required by 44 U.S.C. 3504(h), enacted by the Paperwork Reduction Act of 1980 (Pub. L. 95-511), we will submit a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of those requirements.

V. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and respond to them in the preamble of that rule.

VI. Effect of Final Rule on Pro Contracts

We are now engaged in selecting organizations to serve as PROs pursuant to recently issued Requests for Proposals (RFPs). Should any of the contracting requirements have to be revised as a result of changes made to regulations following our consideration of public comments, we will amend the RFPs, or if contracts have been entered into, we will undertake to amend the contracts accordingly.

VII. List of Subjects in 42 CFR Part 473

Administrative practice and procedure, Health care, Health professions, Professional Standards Review Organizations (PSRO), Reconsiderations, Utilization and Quality Control Peer Review Organizations (PRO).

42 CFR Part 473 would be amended as set forth below:

1. The title of part 473 is revised to read as follows:

PART 473—RECONSIDERATIONS AND APPEALS

2. The table of contents is amended to reflect the establishment of a new Subpart A—PSRO Reconsiderations and Appeals, which contains the current §§ 473.1–473.6 (which are reprinted here for clarity), and a new Subpart B—Utilization and Quality Control Peer Review Organization Reconsiderations and Appeals, and by revising the authority citation to read as follows:

Subpart A—PSRO Reconsiderations and Appeals

Sec.
473.1 Applicability.
473.2 Right to reconsideration, review and hearing.
473.3 Utilization of procedures under Title XVIII. Part A, hearing procedures.
473.4 Professional consultation.
473.5 Determining amount in controversy in case of proposed services.
473.6 Right of judicial review.

Subpart B—Utilization and Quality Control Peer Review Organization Reconsiderations and Appeals

473.7 Statutory provisions and applicability
473.18 Right to a Reconsideration.
473.20 Request for reconsideration.
473.22 Delegation of the reconsideration function.
473.24 Qualifications of a reconsideration reviewer.
473.28 Timing of a request for reconsideration.
473.30 Good cause for late filing of a request for a reconsideration or hearing.
473.32 Opportunity for a party to obtain and submit information.
473.34 Evidence to be considered by the reconsideration reviewer.
473.42 Timing of the reconsidered determination.
473.44 Notice of a reconsidered determination.
473.46 Record of reconsideration.
473.48 Finality of a reconsidered determination.
473.50 Right to a hearing.
473.54 Submitting a request for a hearing.
473.56 Utilization of Medicare Part A hearing procedures.
473.60 Determining the amount in controversy for a hearing.
473.70 Appeals Council and judicial review.
473.80 Reopening and revision of a reconsidered determination.

Authority: Section 1102 of the Social Security Act, 42 U.S.C. 1302. Subpart A is also issued under sec. 150 of Pub. L. 97–248, 42 U.S.C. 1320c note. Subpart B is also issued under sec. 1154(a), 1155 and 1866(a) of the Social Security Act, 42 U.S.C. 1320c–3(a), 1320c–4 and 1395cc(a).

3. A new Subpart B including §§ 473.7–473.80 is added to read as follows:

Subpart B—Utilization and Quality Control Peer Review Organization Reconsiderations and Appeals

§ 473.7 Statutory provisions and applicability.

(a) Section 1154(a)(3) of the Act provides that a provider or practitioner, who is dissatisfied with an initial PRO determination that services furnished or proposed to be furnished are not reasonable, necessary, or delivered in the most appropriate setting, is entitled to an opportunity for discussion and review with the PRO that made the initial determination.

(b) Section 1155 of the Act provides that—

(1) A Medicare beneficiary, a provider, or a practitioner who is dissatisfied with a PRO determination that services furnished or proposed to be furnished are not reasonable, necessary, or delivered in the most appropriate setting, is entitled to a reconsideration by the PRO that made the determination;

(2) A Medicare beneficiary is entitled to a hearing by an administrative law judge if $200 or more is in controversy after the reconsideration; and

(3) A Medicare beneficiary is entitled to judicial review of the final decision of the Department if $2,000 or more is still in controversy.

(c) Section 1866(a)(1)(F) of the Act authorizes PRO review of diagnosis and procedural coding.

(d) Section 1879 of the Act authorizes the application of a limitation of liability for certain furnished items and services excluded from coverage under sections 1862(a)(1) or (1)(9) of the Act, providing for review, hearings, and appeals using the Part A or Part B appeals procedures, as appropriate. (This means that a limitation of liability determination is not an initial determination under section 1154 of the Act, which would be reviewable under section 1155 of the Act.)

(e) This subpart applies to a reconsideration conducted by a PRO or its subcontractor and to any appeal of a PRO reconsidered determination regarding services furnished or proposed to be furnished under Medicare.

(f) A reconsideration, hearing or appeal provided under this subpart is in lieu of any other review, hearing or appeal under the Act with respect to the same issues outlined in paragraphs (a) and (b) of this section.

§ 473.18 Right to a reconsideration.

(a) A beneficiary, practitioner or provider dissatisfied with a PRO determination may obtain a reconsideration of the following issues:

(1) Reasonableness, medical necessity or appropriateness of the services furnished or proposed to be furnished.

(2) Appropriateness of the setting in which the services were furnished.

(b) A beneficiary cannot obtain a reconsideration of an initial determination that results in an assignment of a different DRG. However, when assignment of a different DRG results in noncoverage of a furnished service, the beneficiary may appeal that determination under this subpart.

(c) The beneficiary, practitioner or provider who has been found liable under section 1879 of the Act by a PRO may obtain a reconsideration of that determination; and a practitioner or provider may obtain a reconsideration of the determination that a beneficiary is liable when it is proven that the beneficiary is not pursuing his or her right to a reconsideration. These reconsiderations are governed by Part 405, Subparts G and H of this chapter.

(d) At the request of a provider or practitioner, a PRO may reconsider its changes to the diagnostic and procedural information supplied by a hospital or practitioner that resulted in a different DRG and a lower Medicare payment.

§ 473.20 Request for reconsideration.

(a) A beneficiary who is dissatisfied with a PRO's initial determination may obtain reconsideration by submitting a request in writing to—

(1) The PRO or the PRO subcontractor that made the initial determination;

(2) A PRO representative at the health care facility;

(3) A Social Security District Office; or

(4) A Railroad Retirement Board Office, if the party is a railroad retirement beneficiary.

(b) A provider or practitioner who is dissatisfied with a PRO's initial determination may obtain reconsideration by submitting a request in writing to the PRO or the PRO subcontractor that made the initial determination.

§ 473.22 Delegation of the reconsideration function.

A PRO may delegate the authority to reconsider an initial determination to a nonfacility subcontractor, including the organization that made the initial determination as a PRO subcontractor.

§ 473.24 Qualifications of a reconsideration reviewer.

An individual may make a reconsidered determination only if that individual is qualified to make the initial determination under § 466.98 of this subchapter, Reviewer qualifications and participation. To the extent practicable, the reconsideration reviewer will be someone other than the individual who made the initial determination.

§ 473.28 Timing of a request for reconsideration.

A PRO must reconsider an initial determination if a party files a written request—

(a) Except as provided in paragraph (b) or (c) of this section, within 60 days after the date of receipt of the notice of the initial determination.

(b) Within 3 days after the date of receipt of the notice of a preadmission denial.

(c) After the time periods in paragraphs (a) and (b) of this section, if the PRO finds good cause for the late filing of a request for reconsideration under § 473.30.

§ 473.30 Good cause for late filing of a request for a reconsideration or hearing.

(a) In determining whether a party has shown that it had good cause for not filing a request for reconsideration or hearing timely, the PRO considers—

(1) What circumstances kept a party from making the request on time;

(2) Whether our action misled a party; and

(3) Whether a party did not understand the requirements of the Act resulting from amendments to the Act, other legislation, or court decisions.

(b) Examples of circumstances when good cause may exist include, but are not limited to, the following situations:

(1) A party was seriously ill and was prevented from requesting a reconsideration in person, through another person, or in writing.

(2) There was a death or serious illness in a party's immediate family.

(3) Important records were accidentally destroyed or damaged by fire or other cause.

(4) A party tried very hard but could not find or obtain necessary information to support the medical services before the deadline for requesting reconsideration.

(5) A party requested additional information explaining the action within the time limit, and within 60 days of receiving the explanation, the party requested reconsideration.

(6) The PRO gave the party incorrect or incomplete information about when and how to request a reconsideration.

(7) A party did not receive notice of the determination or decision.

(8) A party sent the request to another Government agency in good faith within the time limit, but the request did not reach an office authorized to receive the request until after the time period had expired.

(9) Other unusual or unavoidable circumstances exist that show that a party could not have known of the need to file timely, or which prevented a party from filing timely.

§ 473.32 Opportunity for a party to obtain and submit information.

(a) At the request of a provider, practitioner or beneficiary, the PRO must provide an opportunity for examination of all the material upon which the initial determination was based. However, the PRO may not furnish a provider, practitioner or beneficiary with—

(1) A record of the PRO deliberation; or

(2) The identity of the PRO review coordinators, physician advisors, or consultants who assisted in the review of the case.

(b) The PRO may require the requester to pay a reasonable fee for the reproduction of the material requested.

(c) The PRO must provide a party with an opportunity to submit new evidence before the reconsidered determination is made.

§ 473.34 Evidence to be considered by the reconsideration reviewer.

A reconsidered determination will be limited to—

(a) The information which led to the initial determination;

(b) New information found in the medical records; and

(c) Additional evidence submitted by a party.

§ 473.42 Timing of the reconsidered determination.

(a) If the beneficiary files a timely request for reconsideration of an initial determination, the PRO must complete its reconsidered determination and send written notice to the beneficiary:

(1) Within 3 working days after the PRO receives the request for reconsideration if—

(i) The beneficiary is still an inpatient in a hospital for the stay in question when the PRO receives the request for reconsideration; or

(ii) The initial determination relates to institutional services for which admission to the institution is sought; and the initial determination was made before the patient was admitted to the institution.

(2) Within 10 working days after the PRO receives the request for reconsideration if the beneficiary is still an inpatient in a SNF for the stay in question when the PRO receives the request for reconsideration.

(3) Within 30 working days after the PRO receives the request for reconsideration if—

(i) The initial determination concerns ambulatory or noninstitutional services;

(ii) The beneficiary is no longer an inpatient in a hospital or SNF for the stay in question; or

(iii) The beneficiary does not file a request for expedited reconsideration timely.

(b) If the provider or practitioner files a request for reconsideration of an initial determination, the PRO must complete its reconsidered determination and send written notice to the provider or practitioner as soon as practicable.

§ 473.44 Notice of a reconsidered determination.

(a) *Notice to parties.* A written notice of a PRO reconsidered determination must contain the following:

(1) The basis for the reconsidered determination.

(2) A detailed rationale for the reconsidered determination.

(3) A statement explaining the Medicare payment consequences of the reconsidered determination.

(4) A statement informing the parties of their appeal rights, including the information concerning what must be included in the request for hearing, the amount in controversy, locations for submitting a request for an administrative hearing and the time period for filing a request.

(5) Adequate information to allow the intermediary or carrier to locate the claim file. This must include the name of the beneficiary, the Health Insurance Claim Number, the name of the provider, date of admission, and dates or services for which Medicare payment will not be made.

(b) *Notice to payers.* A PRO must provide prompt written notification of its reconsidered determination to the appropriate Medicare intermediary or carrier.

§ 473.46 Record of reconsideration.

(a) A PRO must maintain the record of its reconsideration until the later of—

(1) Four years after the date on the notice of the PRO's reconsidered determination; or

(2) Completion of litigation and the passage of the time period for filing all appeals.

(b) The record of the reconsideration must include:

(1) The initial determination.

(2) The basis for the initial determination.

(3) Documentation of the date of the receipt of the request for reconsideration.

(4) The detailed basis for the reconsidered determination.

(5) Evidence submitted by the parties.

(6) A copy of the notice of the reconsidered determination that was provided to the parties.

(7) Documentation of the delivery or mailing and, if appropriate, the receipt of the notice of the reconsidered determination by the parties.

(c) The record of a PRO reconsideration is subject to prohibitions against disclosure of information as specified in section 1160 of the Act and applicable regulations.

§ 473.48 Finality of a reconsidered determination.

A PRO reconsidered determination is final and binding upon all parties to the reconsideration unless—

(a) A hearing is requested in accordance with § 473.52 and a decision rendered; or

(b) The reconsidered determination is later reopened and revised in accordance with § 473.80.

§ 473.50 Right to a hearing.

(a) If the amount in controversy is $200 or more, a beneficiary who is dissatisfied with a PRO reconsidered determination may obtain a hearing by an administrative law judge of the Office of Hearings and Appeals of the Social Security Administration in accordance with the provisions of Subpart G—Reconsiderations and Appeals under the Hospital Insurance Program, of Part 405 of this Chapter.

(b) A hearing for a beneficiary of a PRO reconsidered determination about services under Medicare is limited to the following issues:

(1) Reasonableness.

(2) Medical necessity.

(3) Appropriateness of care.

(4) Appropriateness of the setting in which services were furnished.

(c) A provider or practitioner cannot obtain a hearing on the issues of medical necessity, reasonableness, appropriateness of care, or appropriateness of the setting in which the services were furnished.

(d) Hearings concerning limitation of liability are governed by the rules in § 405.704(c) for Part A determinations and § 405.803)b) for Part B determinations.

§ 473.54 Submitting a request for a hearing.

(a) A request for a hearing must be submitted in writing to any one of the following offices:

(1) The office of the PRO or its subcontractor that made the reconsidered determination, or a PRO representative at the health care facility.

(2) Any Social Security District office.

(3) Any office of the Office of Hearings and Appeals of the Social Security Administration.

(4) Any office of the Railroad Retirement Board, in the case of a railroad retirement beneficiary.

(b) *Timing of a request for an administrative hearing.* The request for an administrative hearing must be submitted within 60 days from the date on the notice of the PRO reconsideration determination, unless the time is extended for good cause as provided in § 473.30.

§ 473.56 Utilization of Medicare Part A hearing procedures.

The following regulations apply to hearings and appeals under this subpart unless they are inconsistent with specific provisions of this subpart:

(a) Reconsiderations and Appeals Under the Hospital Insurance Program—42 CFR Part 405, Subpart G.

(b) For purposes of this section, where appropriate, references to the regulations of the Social Security Administration referred to in Part 405 Subpart G of this chapter mean "PRO" or "Health Care Financing Administration," as applicable.

§ 473.60 Determining the amount in controversy for a hearing.

(a) To determine the amount in controversy, the administrative law judge must—

(1) If the services were proposed, estimate the amount that would have been billed had the services been furnished; or

(2) If the services were furnished, compute the amount in accordance with the principles set forth in Part 405, Subpart D—Principles of Reimbursement for Providers, Outpatient Dialysis and Services by Hospital-Based Physicians and Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement of Services for Hospital Interns, Residents and Supervisory Physicians.

(b) If the administrative law judge determines that the amount in controversy is less than the amount required for a hearing under § 473.50, Beneficiary right to a hearing, or § 473.52, Provider and practitioner right to a hearing, as appropriate, the administrative law judge must promptly notify the parties to the hearing and the PRO that—

(1) The PRO reconsidered determination is conclusive for Medicare payment purposes; and

(2) The parties have 15 calendar days to submit additional evidence to prove that the amount in controversy is at least the required amount.

§ 473.70 Appeals Council and judicial review.

(a) The circumstances under which the Appeals Council of the Social Security Administration will review an administrative law judge's hearing decision or dismissal are specified in 20 CFR 404.970, Cases the Appeals Council will review.

(b) If $2,000 or more is in controversy, a party may obtain judicial review of an Appeals Council decision or a decision of an administrative law judge, where the request for review by the Appeals Council was denied, by filing a civil action under the Federal Rules of Civil Procedure within 60 days after the date the party received notice of the decision of the Appeals Council.

§ 473.80 Reopening and revision of a reconsidered determination.

A PRO reconsidered determination that is otherwise final may be reopened and revised by the PRO or its subcontractor that made the reconsidered determination either on its

own motion or at the request of a party—

(a) Within 1 year from the date of the PRO's reconsidered determination if—

(1) The PRO receives new material evidence;

(2) There is a clerical error in the statement of the reconsidered determination; or

(3) There is an error apparent on the face of the evidence upon which the reconsidered determination was based.

(b) At any time, if the reconsidered determination was obtained through fraud or a similar abusive practice that does not support a formal finding of fraud.

(c) A subcontractor may revise its own reconsidered determinations only with specific written concurrence of the PRO.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: March 22, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: May 7, 1984.

Margaret M. Heckler,

Secretary.

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