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Friday
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Selected Subjects

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Selected Subjects

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 378]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period Sept. 26–Oct. 2, 1982. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: September 26, 1982.

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

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona lemon crop for the benefit of producers, and will not substantially affect costs for the directly regulated handlers.

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

This action is consistent with the marketing policy for 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on July 6, 1982. The committee met again publicly on September 21, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is moderate.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

Section 910.678 is added as follows:

§ 910.678 Lemon regulation 378.

The quantity of lemons grown in California and Arizona which may be handled during the period September 26, 1982, through October 2, 1982, is established at 225,000 cartons.

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

Dated September 22, 1982.

D.S. Kuryloski,

Deputy Director, Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc. 82-26548 Filed 9-23-82; 11:35 am]
BILLING CODE 3410-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Limitation on Survivor's Benefits and Payments to Persons Who Intentionally Cause the Death of a Worker on Whose Earnings Record the Benefits and Payments are Based

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These regulations reflect a change in SSA policy. This policy prohibits benefit payments to any survivor who is found to have intentionally caused the death of the worker on whose earnings record the benefit payments are based. It provides for uniform treatment of juveniles and adults in these homicide cases and is consistent with the well-established principle that an individual should not profit directly from intentionally causing another person's death.

EFFECTIVE DATES: These regulations became effective when interim rules were published on March 30, 1982 (47 FR 13324).

FOR FURTHER INFORMATION CONTACT: F. Miranda, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7341.

SUPPLEMENTARY INFORMATION: These regulations reflect a change in SSA policy that a child who is found to have intentionally caused the death of a parent or spouse may not collect Social Security benefits based on that person's earnings. Prior policy denied survivor's payments only to persons finally convicted of a felony for intentionally causing a worker's death. In most jurisdictions, no conviction of a felony is possible for individuals who are under the jurisdiction of the juvenile court system. On that basis, the Social Security Administration has paid

benefits to children in this category who otherwise qualified for benefit payments.

These regulations also remove the term "finally" before "convicted" in the regulations to make clear, both with respect to adults and juveniles, that benefit payments will not be made beginning with the month a court pronounces a conviction and withholding of the benefits or payments will continue unless and until the conviction is reversed.

Provisions of the Regulations

The major portion of this regulation deals directly with juveniles and reflects our policy that an individual subject to the juvenile justice system may not become entitled to, or continue to receive, benefit payments based on the earnings record of the deceased person if he or she has been found by a court of competent jurisdiction to have intentionally caused that person's death by committing an act which, if committed by an adult, would have been considered a felony or an act in the nature of a felony.

The regulations also clarify our rules of administrative finality with respect to individuals involved in proceedings arising out of the intentional killing of the worker in the juvenile justice system to treat such individuals in the same way as adults convicted of the felonious homicide of the worker.

In addition, we are also removing the term "finally" before "convicted" in the regulations in order to make clear with respect to adults and juveniles that benefit payments will not be made beginning with the month a court pronounces a conviction and withholding of the benefits or payments will continue unless and until the conviction is reversed. In situations involving reversals, the rules of administrative finality in § 404.988 will apply.

Interim regulations were published in the **Federal Register** on March 30, 1982 (47 FR 13324). These rules reflected a change in SSA policy which applies to juveniles and are based on the well-established principle that an individual should not profit from intentionally causing another person's death. As provided by the Administrative Procedure Act (5 U.S.C. 553(b)(B)), we found that publication of a notice of proposed rulemaking (NPRM) was "contrary to the public interest" because the already widely manifested interest of the public in prompt effectuation of this change would have been defeated by any requirement of advance notice. However, to insure that the public had an opportunity to give us their views about these regulations, we asked interested persons to send us their comments before proceeding with these final amendments. The comment period ended on June 1, 1982. We did not receive any comments on or before that date, and we have not made any significant changes in the final regulations.

Regulatory Procedures

Executive Order 12291—These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act—We certify that these regulations do not have a significant impact on small entities because they affect only individuals. Consequently, we have determined that a regulatory flexibility analysis as provided by Pub. L. 96–354, the Regulatory Flexibility Act of 1980, is not necessary.

Paperwork Reduction Act—These regulations impose no reporting or recordkeeping requirements requiring OMB clearance.

(These regulations are issued under the authority contained in sections 205 and 1102 of the Social Security Act; 49 Stat. 624 and 646; 42 U.S.C. 405 and 1302)

(Catalog of Federal Domestic Assistance Program No. 13.805 Social Security Survivor's Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-age, survivors and disability insurance.

Dated: July 21,1982.

John A. Svahn,

Commissioner of Social Security.

Approved: September 1, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. In § 404.305, paragraph (b) is revised to read as follows:

§ 404.305 When you may not be entitled to benefits.

* * * * *

(b) Insured's death caused by an intentional act. You may not become entitled to or continue to receive any survivor's benefits or payments on the earnings record of any person if you were convicted of a felony or an act in the nature of a felony of intentionally causing that person's death. If you were subject to the juvenile justice system, you may not become entitled to or continue to receive survivor's benefits or payments on the earnings record of any person if you were found by a court of competent jurisdiction to have intentionally caused that person's death by committing an act which, if committed by an adult, would have been considered a felony or an act in the nature of a felony.

2. In § 404.988, paragraph (c)(9) is revised to read as follows:

§ 404.988 Conditions for reopening

* * * * *

(c) At any time if—

* * * * *

(9) It finds that you are entitled to monthly benefits or to a lump-sum death payment based on the earnings of a deceased person, and it is later established that (i) you were convicted of a felony or an act in the nature of a felony for intentionally causing that person's death; or (ii) if you were subject to the juvenile justice system, you were found by a court of competent jurisdiction to have intentionally caused that person's death by committing an act which, if committed by an adult, would have been considered a felony or an act in the nature of a felony.

[FR Doc.82–26374 Filed 9–23–82; 8:45 am]

BILLING CODE 4190–11–M

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Orphan Products (Drugs, Biologics, and Medical Devices)

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to add a new delegation of authority regarding orphan products. The Director, Orphan Products Development, Office of the Commissioner, is being delegated the authority to issue notices inviting sponsorship and submission of documentation to obtain marketing approval for orphan products (drugs, biologics, and medical devices).

EFFECTIVE DATE: September 24, 1982.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Office of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA has established a new program to facilitate the availability of products (drugs, biologics, and medical devices) useful in treating or diagnosing rare diseases or common diseases for which no sponsor exists. The first notices implementing this program are published elsewhere in this issue of the Federal Register.

FDA is adding new § 5.58 (21 CFR 5.58) to provide the Director, Orphan Products Development, with authority to issue such notices in the future.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

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

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)) and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 5 is amended by adding new § 5.58, to read as follows:

§ 5.58 Issuance of notices inviting sponsorship and submission of documentation for marketing approval for orphan products.

The Director, Orphan Products Development, Office of the Commissioner, is authorized to issue notices, and amendments thereto, inviting sponsorship for orphan products (drugs, biologics, and medical devices) and submission of new drug applications, new animal drug applications, applications for product license for biologics, or premarket approval applications for medical devices, as appropriate.

Effective date.—This regulation shall become effective September 24, 1982.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)); sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262))

Dated: September 9, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82-26180 Filed 9-23-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 442

[Docket No. 82N-0277]

Antibiotic Drugs; Cefamandole Nafate for Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the certification of cefamandole nafate for injection produced by a new manufacturing process. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective September 24, 1982; comments, notice of participation, and request for hearing by October 25, 1982; data, information, and analyses to justify a hearing by November 23, 1982.

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

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, National Center for Drugs and Biologics (HFD-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of cefamandole nafate for injection manufactured by a new process which does not involve isolation of cefamandole nafate in the preparation of the finished drug product. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when the drug is used as directed in the labeling and that the regulations should be amended in Part 442 (21 CFR Part 442) to provide for its certification.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 442

Antibiotics, Cepha.

PART 442—CEPHA ANTIBIOTIC

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 442 is amended in § 442.208 by revising paragraphs (a) (1) and (3) and (b)(1) and adding (b)(7) to read as follows:

§ 442.208 Cefamandole nafate for injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefamandole nafate for injection is a dry mixture of cefamandole nafate and one or more suitable and harmless buffering agents. The cefamandole nafate may be isolated in the manufacture of cefamandole nafate for injection. Its cefamandole content is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of cefamandole that it is represented to contain. It is sterile. It is nonpyrogenic. It passes the safety test. Its moisture content is not more than 3.0 percent. Its pH is not less than 6.0 and not more than 8.0. If isolated, the cefamandole nafate used conforms to the standards prescribed by § 442.8a(a)(1). If the cefamandole nafate is not isolated, the potency of the dry mixture is not less than 810 micrograms and not more than 1,000 micrograms of cefamandole per milligram on an anhydrous basis when corrected for sodium carbonate; and the dry mixture gives a positive identity test.

* * * * *

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on: (*a*) If isolated, the cefamandole nafate used in making the batch for cefamandole content, moisture, pH, and identity.

(*b*) The batch for cefamandole content, sterility, pyrogens, safety, moisture, and pH. In addition, if the cefamandole nafate is not isolated, results of tests and assays on the dry mixture for potency and identity.

(ii) Samples required: (*a*) For all tests except sterility: A minimum of 10 immediate containers, unless the cefamandole nafate is not isolated, a minimum of 15 immediate containers.

(*b*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Cefamandole content.* Proceed as

directed in § 436.324 of this chapter, preparing the sample solution and calculating the cefamandole content as follows:

(i) *Sample preparation.* Reconstitute the sample as directed in the labeling. If it is represented as a single dose container, remove all of the withdrawable contents with a suitable hypodermic needle and syringe. If the labeling specifies the amount of cefamandole content in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Further dilute an aliquot of this solution with distilled water to obtain a concentration of 2.0 milligrams of cefamandole per milliliter (estimated). Transfer 5 milliliters of this solution to a 50-milliliter volumetric flask, add 30 milliliters of pH 2.3 buffer, dilute to volume with distilled water, and mix. In addition, if the cefamandole nafate is not isolated, prepare the sample solution as described in § 436.324(d) of this chapter. Determine the sodium carbonate content as follows: Dissolve an accurately weighed portion of the dry mixture, approximately 1.0 gram, with approximately 100 milliliters of distilled water. Titrate with 0.2*N* hydrochloric acid. Determine the end-point potentiometrically to the first equivalent using a glass calomel combination electrode. Each milliliter of 0.2*N* hydrochloric acid is equivalent to 21.2 milligrams of sodium carbonate.

(ii) *Calculations*—(*a*) Calculate the cefamandole content as follows:

$$\text{Milligrams of cefamandole} = \frac{A \times \text{Milligrams of working standard} \times \text{Potency of working standard in micrograms per milligram} \times f}{B \times 50 \times 1{,}000}$$

where:
A = The peak height of the sample;
B = The peak height of the working standard; and
f = The dilution factor of the sample.

(*b*) If the cefamandole nafate is not isolated in the manufacture of cefamandole nafate for injection, calculate the micrograms of cefamandole per milligram of sample as described in § 436.324(f) of this chapter. The micrograms per milligram of cefamandole is corrected for sodium carbonate content and moisture content.

* * * * *

(7) *Identity.* Proceed as directed in § 436.323 of this chapter.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. In accordance with the conditions for certification in section 507 of the act (21 U.S.C. 357), FDA permits the manufacturer to market this drug on a "release" status pending this regulation's becoming effective. Because this regulation is not controversial and because when effective it provides notice of accepted standards and permits earlier certification of regulated products, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective September 24, 1982. However, interested persons may, on or before October 25, 1982, submit written comments on this rule to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before October 25, 1982, a written notice of participation and request for hearing, and (2) on or before November 23, 1982, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective September 24, 1982.

(Secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g)))

Dated: September 16, 1982.

James C. Morrison,
Acting Assistant Director for Regulatory Affairs.

[FR Doc. 82-26348 Filed 9-23-82; 8:45 am]
BILLING CODE 4160-01-M

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21 CFR Parts 510, 548, and 558

New Animal Drugs; Bacitracin Methylene Disalicylate and Bacitracin Zinc With and Without Penicillin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to withdraw approval of certain claims contained in the new animal drug applications (NADA's) filed by A. L. Laboratories, Inc., and International Minerals & Chemical Corp. for use of various bacitracin products in the drinking water and feed of chickens, turkeys, pheasants, quail, swine, and cattle. The withdrawals comply with the conclusions of the National Academy of Sciences/National Research Council's (NAS/NRC) evaluation of the products.

EFFECTIVE DATE: September 24, 1982.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Bureau of Veterinary Medicine (HFV-147), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: A. L. Laboratories, Inc., 452 Hudson Terrace, Englewood Cliffs, NJ 07632, is sponsor of NADA's 46-592, 65-470, and 98-452. International Minerals & Chemical Corp., P.O. Box 207, Terre Haute, IN 47808, is sponsor of NADA's 46-920 and 65-313. The applications provide for

various uses of bacitracin methylene disalicylate and/or bacitracin zinc for chickens, turkeys, pheasants, quail, swine, and cattle. Applications for use of bacitracin alone or with penicillin were approved before October 10, 1962. Bacitracin (with or without penicillin) was the subject of NAS/NRC notices published in the Federal Register of July 17, 1970 (DESI 0061NV; 35 FR 11531) and October 2, 1970 (DESI 0061NV; 35 FR 15408). In response to the notices, A. L. Laboratories, Inc., and International Minerals & Chemical Corp. filed supplemental NADA's with final printed labeling and requested that the regulations be amended to remove those claims which were NAS/NRC reviewed and found not effective or probably not effective, or which are not otherwise supported by adequate and well-controlled studies. The final printed labeling reflects the conclusions of the NAS/NRC reviews and complies with the other provisions of the regulations.

A. L. Laboratories, Inc., and International Minerals & Chemical Corp. did not submit NADA's or supplements for bacitracin plus penicillin combination premixes, neither firm is marketing a bacitracin/penicillin combination premix, and both firms have waived opportunity for hearing on withdrawal of approval. Therefore, all approved uses of bacitracin plus penicillin in combination are withdrawn by this action because of the absence of effectiveness data to support the combination products and/or claims (these were therapeutic claims which were judged by NAS/NRC to be probably not effective).

Based on new data and information and revised labeling reflecting newer knowledge concerning the bacitracin products and their use, supplemental NADA's were approved and the regulations were amended accordingly. FDA published these approvals on December 9, 1980 (45 FR 81038); April 10, 1981 (46 FR 21362 and 21363); April 14, 1981 (46 FR 21748); April 17, 1981 (46 FR 22361); April 21, 1981 (46 FR 22754); July 17, 1981 (46 FR 37043); August 14, 1981 (46 FR 41041); December 11, 1981 (46 FR 60571); December 15, 1981 (46 FR 61073); April 27, 1982 (47 FR 17985); April 30, 1982 (47 FR 18591); and June 8, 1982 (47 FR 24693). However, not all of the outdated claims and use levels were removed from the regulations when these supplemental NADA's were approved. This document revises the bacitracin regulations for medicated drinking water and feed premixes by removing those claims not approved by NAS/NRC or not otherwise supported by adequate and well-controlled studies. A summary of specific claims being withdrawn follows:

Claim(s) and dose(s) removed	Sections affected	NADA's affected
1. Treatment of chronic respiratory disease (air-sac infection); infectious sinusitis, and blue comb (non-specific infectious enteritis) in poultry:		
(500 grams bacitracin zinc per ton)	510.515(b)(10)	46-920
(200 grams bacitracin methylene disalicylate per ton)	510.515(b)(10)	46-592
2. As an aid in the treatment of chronic respiratory disease (air-sac infection); infectious sinusitis, blue comb (non-specific infectious enteritis, mud fever) in poultry: (100 grams bacitracin per ton).	510.515(b)(17)	46-920; 46-592
3. Prevention of chronic respiratory disease (air-sac infection); blue comb (nonspecific infectious enteritis) in chickens:		
(100 to 200 milligrams per gallon)	548.112a(c)(5)(i)(*a*)	65-470
(50 to 100 grams per ton)	558.76(e)(1)(iv)1	46-592
	558.78(e)(1)(iv)1	46-920
4. Treatment of chronic respiratory disease (air-sac infection); blue comb (nonspecific infectious enteritis) in chickens:		
(200 to 400 milligrams per gallon)	548.112a(c)(5)(i)(*b*)	65-470
(100 to 200 grams per ton)	558.76(e)(1)(iv)1	46-592
(100 to 500 grams per ton)	558.78(e)(1)(iv)1	46-920
5. Prevention of infectious sinusitis; blue comb (mud fever) in turkeys:		
(200 milligrams per gallon)	548.112a(c)(5)(iii)(*a*)	65-470
(50 to 100 grams per ton)	558.76(e)(1)(iv)3	46-592
	558.78(e)(1)(iv)2	46-920
6. Treatment of infectious sinusitis; blue comb (mud fever) in turkeys: (200 to 400 milligrams per gallon).	548.112a(c)(5)(iii)(*b*)	65-470
7. Chickens, turkeys, and pheasants; growth promotion and feed efficiency: (4 to 50 grams per ton)	558.76(e)(1)(i)1	46-592
	558.78(e)(1)(i)1	46-920
8. Quail, not over 5 weeks of age; growth promotion and feed efficiency: (5 to 20 grams per ton)	558.76(e)(1)(ii)1	46-592
	558.78(e)(1)(ii)1	46-920
9. Swine; growth promotion and feed efficiency: (10 to 50 grams per ton)	558.76(e)(1)(iii)1	46-592
	558.78(e)(1)(iii)1	46-920
10. Chickens; maintaining or increasing egg production: (10 to 50 grams per ton)	558.76(e)(1)(iii)2	46-592
	558.78(e)(1)(iii)2	46-920
11. Swine; aid in prevention of bacterial swine enteritis: (50 to 100 grams per ton)	558.76(e)(1)(iv)2	46-592
	558.78(e)(1)(iv)3	46-920
12. Chickens; maintaining or increasing hatchability of eggs: (100 grams per ton)	558.76(e)(1)(v)1	46-592
	558.78(e)(1)(v)1	46-920
13. Chickens; during times of stress, prevention of diseases named in this section caused by organisms susceptible to bacitracin: (100 grams per ton).	558.76(e)(1)(v)2	46-592
14. Chickens; prevention of early mortality of chicks due to susceptible organisms:	558.78(e)(1)(v)2	46-920
(100 grams per ton)	558.76(e)(1)(v)3	46-592
(100 to 500 grams per ton)	558.78(e)(1)(vi)2	46-920
15. Swine; treatment of bacterial swine enteritis: (100 grams per ton)	558.76(e)(1)(v)3	46-592
	558.78(e)(1)(v)3	46-920
16. Chickens; treatment of chronic respiratory disease (air-sac infection); blue comb (nonspecific infectious enteritis):		
100 to 200 of combination (bacitracin methylene diasicylate and penicillin)	558.76(e)(1)(vi)	46-592
100 to 500 of combination (bacitracin zinc and penicillin)	558.78(e)(1)(vi)	46-920
17. Turkeys; treatment of infectious sinusitis; blue comb (mud fever):		
100 to 200 of combination (bacitracin methylene diasicylate and penicillin)	558.76(e)(1)(vi)	46-592
100 to 500 of combination (bacitracin zinc and penicillin)	558.78(e)(1)(vi)	46-920
18. Swine; treatment of bacterial swine enteritis:		
100 of combination (bacitracin methylene diasicylate and penicillin)	558.76(e)(1)(v)	46-592
100 of combination (bacitracin zinc and penicillin)	558.78(e)(1)(v)	46-920

Also, the approved premix levels for A. L. Laboratories' bacitracin methylene disalicylate had not previously been codified (April 30, 1982; 47 FR 18591). This document amends the regulations in 21 CFR 558.76(a) to add those premix

levels (10, 25, 40, and 50 grams per pound).

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal foods, Labeling, Reporting requirements.

21 CFR Part 548

Animal drugs, Antibiotics, peptides.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 510, 548, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. Part 510 is amended in § 510.515 by revising paragraphs (b)(10) and (b)(17)(i), to read as follows:

§ 510.515 Animal feeds bearing or containing new animal drugs subject to the provisions of section 512(n) of the act.

* * * * *

(b) * * *

(10) It is intended for use solely in the treatment of chronic respiratory disease (air-sac infection), infectious sinusitis, and blue comb (nonspecific infectious enteritis) in poultry and/or bacterial swine enteritis; its labeling bears adequate directions and warnings for such use; and it contains, per ton of feed, the equivalent of 100 grams of penicillin. When intended for uses specified in this paragraph, it may also contain, in the amount specified, one, but only one, of the ingredients prescribed by paragraph (a) of this section.

* * * * *

(17)(i) It is intended for use solely as an aid in the treatment of chronic respiratory disease (air-sac infection), infectious sinusitis, blue comb (nonspecific infectious enteritis, mud fever) in poultry; its labeling bears adequate directions and warnings for such use; and it contains not less than 100 grams of chlortetracycline or oxytetracycline or a combination of these two drugs per ton of food.

* * * * *

PART 548—CERTIFIABLE PEPTIDE ANTIBIOTIC DRUGS FOR ANIMAL USE

2. Part 548 is amended in § 548.112a by revising paragraph (c)(5), to read as follows:

§ 548.112a Bacitracin methylene disalicylate soluble powder.

* * * * *

(c) * * *

(5) *Conditions of use.* It is used in drinking water as follows:

(i) *Growing turkeys—(a) Amount per gallon.* 400 milligrams.

(*1*) *Indications for use.* Aid in control of transmissible enteritis complicated by organisms susceptible to bacitracin methylene disalicylate.

(*2*) *Limitations.* Prepare a fresh solution daily.

(*b*) [Reserved]

(ii) *Broiler chickens (a)—Amount per gallon.* 100 milligrams.

(*1*) *Indications for use.* Aid in prevention of necrotic enteritis caused by *Clostridium perfringens* susceptible to bacitracin methylene disalicylate.

(*2*) *Limitations.* Prepare a fresh solution daily.

(*b*) *Amount per gallon.* 200 to 400 milligrams.

(*1*) *Indications for use.* Aid in control of necrotic enteritis caused by *C. perfringens* susceptible to bacitracin methylene disalicylate.

(*2*) *Limitations.* Prepare a fresh solution daily.

(iii) *Swine—(a) Amount per gallon.* One gram.

(*1*) *Indications for use.* For treatment of swine dysentery associated with *Treponema hyodysenteriae.* Administer continuously for 7 days or until signs of dysentery disappear.

(*2*) *Limitations.* Prepare a fresh solution daily. Treatment not to exceed 14 days. If symptoms persist after 4 to 5 days consult a veterinarian. Not to be given to swine that weigh more than 250 pounds.

(*b*) [Reserved]

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. Part 558 is amended:

a. In § 558.76 by adding new paragraph (a) and in the table in paragraph (e)(1) by revising items (i) and (ii), by removing items (v), (vii), and (viii) and marking them reserved, and by revising item (ix), to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

(a) *Approvals.* Premix levels of 10, 25, 40, and 50 grams of bacitracin activity per pound granted to No. 046573 in § 510.600(c) of this chapter.

* * * * *

(e) * * *

(1) * * *

Bacitracin methylene disalicylate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsors
(i) 4 to 50		Chickens, turkeys, and pheasants; increased rate of weight gain and improved feed efficiency.[1]		046573
(ii) 5 to 20		Quail not over 5 weeks of age; increased rate of weight gain and improved feed efficiency [1]		046573
* * * * * * *				
(v) [Reserved]				
(vii)–(viii) [Reserved]				
(ix) 100 to 200		Broiler chickens; as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin..		046573
* * * * * * *				

[1] These conditions are NAS/NRC reviewed and found effective. Applications for these uses may not require effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

b. In § 558.78 in the table in paragraph (e)(1) by removing items (vii), (viii), and (ix), and by revising items (i), (ii), and (iv), to read as follows:

§ 558.78 Bacitracin zinc.

* * * * *

(e) * * *

(1) * * *

Bacitracin zinc in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsors
(i) 4 to 50		Chickens, turkeys, and pheasants; for increased rate of weight gain and improved feed efficiency[1].	Growing chickens, turkeys, and pheasants[1]	012769, 046573
(ii) 5 to 20		Quail; for increased rate of weight gain and improved feed efficiency[1].	Growing quail; feed as the complete feed to starting quail through 5 weeks of age[1].	012769, 046573
*	*	*	*	*
(iv) 10 to 50		Swine; increased rate of weight gain and improved feed efficiency.	Growing and finishing swine	046573
*	*	*	*	*

[1]These conditions are NAS/NRC reviewed and found effective. Applications for these uses may not require effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

* * * * *

§ 558.460 [Amended]

c. In § 558.460 *Penicillin* by removing paragraph (f)(2) (iii) and (iv) and marking them reserved.

Effective date. September 24, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: September 15, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82-26085 Filed 9-23-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Approval of Supplements to Oregon State Plan

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The State of Oregon has submitted various supplements to its Occupational Safety and Health Plan. This document announces the approval of those supplements.

EFFECTIVE DATE: September 24, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph C. Acton, Project Officer, Office of State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, D.C. 20210 (202) 523-8045.

SUPPLEMENTARY INFORMATION:

Background

Part 1953 of Title 29, Code of Federal Regulations, provides procedures under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act) for review of changes and progress in the development and implementation of State plans which have been approved in accordance with Section 18(c) of the Act and Part 1902 of this chapter. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon developmental plan and the adoption of Subpart D to Part 1952 containing the decision and a description of the plan. A notice of approval of a Revised Developmental Schedule was published on April 1, 1974 in the **Federal Register** (39 FR 11881).

Subsequently, the State of Oregon submitted State-initiated program changes, and developmental supplements which provide: administrative rules for inspections, citations, extensions of abatement, etc.; rules governing contested cases before the Workers' Compensation Board; rules of the Bureau of Labor and Industries for handling discrimination complaints; a revised State poster; and amended legislation reflecting changes made to the originally approved Oregon Safe Employment Act.

Review of the State supplements by the Regional and National Offices identified some procedural concerns which needed to be addressed before approval. In response, the Oregon Workers' Compensation Department provided adequate corrections, clarifications, and assurances to address those concerns by letters dated May 24, 1982, August 13, 1982 and August 27, 1982. The supplements with the assurances, etc., were then forwarded by the Regional Administrator to the Assistant Secretary for Occupational Safety and Health (hereinafter called the Assistant Secretary) for approval.

Description of Plan Supplements

1. Oregon Administrative Rules (Chapter 436, Division 46-005 through 750). In accordance with the requirements of 29 CFR 1952.108 (c) and (g) the Oregon Workers' Compensation Department adopted rules including procedures for conduct and scheduling of inspections, issuance of citations, proposal of penalties for violations, extension of abatement dates, employee complaints, variances from the standards and on-site consultations to assist public sector employers in voluntary compliance. Private sector employees are provided on-site consultation services through a separate program funded under section 7(c)(1) of the Act. The State originally submitted regulations effective July 1, 1974, which were subsequently revised to address Federal and State-identified procedural concerns. The State also deleted a requirement that an employee observed violating a standard be named on a citation. The most recent complete revision to these State rules became effective August 1, 1982, and incorporated all earlier revisions. By letters dated May 24, 1982, August 13, 1982, and August 27, 1982, to the Regional Administrator, the State provided assurances in response to Federal review and comment that an employer must prove that an extension of abatement application is proper if an administrative hearing is held on his application, that notice and opportunity to comment is provided to affected employees when the director considers discretionary amendment of a citation which has not been appealed in a case of manifest injustice, that employee complaints are assured of confidentiality, and that in imminent danger situations where a red tag is issued to prevent employee exposure a citation will also be issued for any violations of standards.

2. Rules of Practice and Procedure for Contested Cases Under the Oregon Safe Employment Act (Chapter 438, Workers' Compensation Board, Division 85-006 through 870). In accordance with the requirements of 29 CFR 1952.108(c), Oregon adopted rules effective December 20, 1973, governing the review of contested cases, which subsequently were revised to address Federal and State-identified procedural concerns. The revised State rules under this chapter became effective August 2, 1982. In response to Federal review and comment on the contested case rules,

the State Workers' Compensation Department provided under its administrative rules effective August 13, 1982 that settlement agreements of contested cases must be posted for employees before becoming final and that notices of hearings before the Board must also be posted for employees.

3. Complaint Procedures and Substantive Rules, Opposition to Health and Safety Hazards (Chapter 839, Oregon Administrative Rules, Division 3 and 6—Bureau of Labor and Industries). In accordance with 29 CFR 1902.4(v), the State's plan provides for complaints of discrimination against an employee for exercising rights under the Oregon Safe Employment Act to be enforced by the Bureau of Labor and Industries. By letter dated August 13, 1982, to the Regional Administrator, the State Bureau of Labor and Industries provided assurance in response to Federal comment that oral complaints of discrimination are considered timely and investigated if followed by a written complaint. The State rules under Division 3 became effective June 25, 1982, and those rules under Division 6, became effective March 12, 1982.

4. Oregon State Poster. The State submitted a revised poster which references alternate filing of discrimination complaints in accordance with assurances provided with its earlier poster approved November 5, 1975 (40 FR 52367).

5. Oregon Safe Employment Act. The Oregon Safe Employment Act which contained changes to the enabling legislation outlined in its developmental plan was approved June 3, 1975 (40 FR 24522). Revisions to the legislation were made in 1975, 1977, and 1981 and included changes which renamed the designated enforcement agency from the Workmen's Compensation Board to the Workers' Compensation Department, established a director for the department, provided authority to require employers of ten or more workers to establish safety and health committees when an employer exceeds a certain lost work day case incidence rate for its industry, and restricted first-instance penalties for other-than-serious violations in labor camps.

Location of the Plan and Its Supplements for Inspection and Copying

A copy of the State's plan and the supplements may be inspected and copied during normal business hours at the following locations:

Office of the Director of Federal Compliance and State Programs, Occupational Safety and Health Administration, Room N-3619, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174.

Office of Director, Workers' Compensation Department, Labor and Industries Building, Salem, Oregon 97310

Public Participation

Under 29 CFR 1953.2(c) of this chapter, the Assistant Secretary for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) may prescribe alternative procedures to expedite the review process or for any good cause which may be consistent with applicable law. The Assistant Secretary finds that the Oregon regulations for complaints of discrimination under the Oregon Safe Employment Act were adopted in accordance with procedural requirements of State law and consistent with commitments made in the approved plan. Accordingly, it is found that further public participation would be unnecessary.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Decision

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

After careful consideration, the Oregon plan supplements outlined above are approved under Part 1953 of this chapter. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally. Accordingly, § 1952.109 of 29 CFR Part 1952 is amended to reflect the completion of developmental steps and the revision of previously approved developmental steps by adding a paragraph (a)(3), revising paragraph (b), and adding new paragraphs (i), (j) and (k) to the list of completed developmental steps as follows:

§ 1952.109 Completed developmental steps.

(a) * * *

(3) The Oregon Safe Employment Act as last amended in the 1981 legislative session included changes renaming the designated enforcement agency, establishment of a director for that agency, authority for requiring certain employers to establish safety and health committees, and limiting penalties for other-than-serious violations in temporary labor camps. The Assistant Secretary approved the amended legislation on September 15, 1982.

(b) In accordance with the requirements of 29 CFR 1952.10 the Oregon State Poster with assurance submitted on September 2, 1975, was approved by the Assistant Secretary on November 5, 1975. The State's revised poster which implemented the assurance was approved by the Assistant Secretary on September 15, 1982.

* * * * *

(i) In accordance with § 1952.108 (c) and (g), the Oregon Workers' Compensation Department adopted administrative regulations providing procedures for conduct and scheduling of inspections, extension of abatement dates, variances, employee complaints, posting of citations and notices, and voluntary compliance consultation in the public sector, effective July 1, 1974, with revisions incorporated in rules effective August 1, 1982 and August 13, 1982. These regulations with supplemental assurances were approved by the Assistant Secretary on September 15, 1982.

(j) In accordance with § 1952.108(c) the Oregon Workers' Compensation Board adopted rules effective December 20, 1973, governing practice and procedures for contested cases with revisions incorporated in rules effective August 2, 1982. These rules were approved by the Assistant Secretary on September 15, 1982.

(k) The Oregon Workers' Compensation Department submitted rules of the Oregon Bureau of Labor and Industries, the agency asigned responsibility for investigation of complaints of discrimination under the Oregon Safe Employment Act. These regulations and rule effective June 21, 1982, and March 12, 1982 with supplemental assurance were approved by the Assistant Secretary on September 15, 1982.

(Sec. 18, Pub. L. 91-596; 84 Stat. 1608; (29 U.S.C. 667))

Signed in Portland, Oregon, this 15th day of September, 1982.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 82-26412 Filed 9-23-82; 8:45 am]

BILLING CODE 4510-26-M

29 CFR Part 1952

Certification of Completion of Developmental Steps for Oregon State Plan

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The State of Oregon on or before December 28, 1975, submitted documentation attesting to the completion of all structural and developmental aspects of its approved State plan. After extensive review of those documents and subsequent revisions, and opportunity for State correction, all developmental plan supplements have now been approved. This notice certifies this completion and the beginning of the final evaluation phase of State plan development. This certification attests only to the fact that Oregon now has in place those structural components necessary for an effective program. It renders no judgment on the adequacy of the State's actual performance.

EFFECTIVE DATE: September 24, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph C. Acton, Project Officer, Office of State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523–8045.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act," 29 U.S.C. 667) provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards shall submit for Federal approval a State plan for such development and enforcement. Part 1902 of Title 29, Code of Federal Regulations, sets forth procedures under which the Assistant Secretary of Labor for Occupational Safety and Health ("Assistant Secretary") shall approve such plans. Under the Act and regulations, plan approval is essentially a two step procedure. First a State must submit its plan for an initial determination under Section 18(b) of the Act. If the Assistant Secretary, after reviewing the State submission determines that the plan satisfies or will satisfy within a maximum three year development period the criteria set forth in Section 18(c) of the Act, a decision of "initial approval" is issued and the State may begin enforcement of its safety and health standards in accordance with the plan and with the maintenance of concurrent enforcement authority by the Occupational Safety and Health Administration (OSHA).

A State plan may receive initial approval even though at the time of submission not all essential components of the plan are in place. Pursuant to 29 CFR 1902.2(b), the Assistant Secretary may initially approve the submission as a "developmental plan," and a schedule within which the State must complete specified "developmental steps" is issued as part of the initial approval decision.

When the Assistant Secretary finds that the State has completed all developmental steps specified in the initial approval decision, a notice of such completion is published in the **Federal Register** (see 29 CFR 1902.34 and 1902.35). Certification of completion of developmental steps initiates a thorough evaluation of the State plan by the Assistant Secretary to determine on the basis of actual operations, whether the plan adequately provides safety and health protection to the employees in the State. Certification does not render judgment as to the adequacy of State performance.

The second step of the approval process is final approval of the plan under Section 18(e) of the Act and 29 CFR Part 1902. Final approval may not be granted until at least three years after initial approval and one year after certification of completion of developmental steps. Thereafter, when the Assistant Secretary determines on the basis of actual performance under the plan that the criteria are being met, a decision of final approval may be granted. This decision is based on a thorough evaluation of the State plan under Section 18(e) of the Act and reflects a determination that on the basis of actual operations the plan adequately protects the safety and health of the State's workers. In making this evaluation under Section 18(e), the Assistant Secretary must monitor the continuing development of the State program, applying criteria which assure that the State will have an at least as effective program for achieving the goals of the Act.

On December 28, 1972, a notice was published in the **Federal Register** (37 FR 26628) initially approving the Oregon developmental plan and adopting Subpart D of Part 1952 containing the decision, a description of the plan and the developmental schedule. Approval of a revised developmental schedule was published in the **Federal Register** on April 1, 1974 (39 FR 11881). During the three year period ending December 28, 1975, following commencement of State operations, the Oregon Workers' Compensation Department submitted documentation attesting to the completion of each State developmental commitment for review and approval as provided in 29 CFR Part 1953. Following Agency review and subsequent explanation and modification of the State's submission in response to Federal comment, the Assistant Secretary has approved the completion of all individual developmental steps.

Completion of Developmental Steps

All developmental steps specified in the December 28, 1972, notice of initial approval and other relevant steps not explicitly referred to have been completed as follows:

(a) In accordance with the requirements of 29 CFR 1952.108(a) the Oregon Safe Employment Act (S.B. 44, ORS Chapter 654) effective July 1, 1973, was approved by the Assistant Secretary on June 3, 1975 (40 FR 52368). Revised legislation as last amended by the legislature in 1981 was approved by the Assistant Secretary on September 15, 1982.

(b) In accordance with the requirements of 29 CFR 1952.10 the Oregon State Poster with assurance submitted on September 2, 1975, was approved by the Assistant Secretary on November 5, 1975. The State's revised poster which implemented the assurance was approved by the Assistant Secretary on September 15, 1982.

(c) In accordance with 29 CFR 1952.108(c) Oregon has completed its training of State inspection personnel as described, which completion was approved by the Assistant Secretary on February 24, 1976 (41 FR 8955).

(d) In accordance with 29 CFR 1952.108(d) Oregon has developed and implemented a computerized Management Information System which was approved by the Assistant Secretary on February 24, 1976 (41 FR 8955). Oregon has since begun participation in a Unified Federal-State Management Information System.

(e) In accordance with 29 CFR 1952.108(f) Oregon has developed and implemented an Affirmative Action Plan which was approved by the Assistant Secretary on June 8, 1976 (41 FR 23671).

(f) The personnel operations of the Oregon Workers' Compensation Department under merit system rules were certified by the Director of the Seattle Regional Office, United States Office of Personnel Management (previously U.S. Civil Service Commission) as being in accordance with merit system standards by letter of January 15, 1976.

(g) In accordance with 29 CFR 1952.108(e) a Statement of Goals and Objectives has been developed by the State and was approved by the Assistant Secretary on June 24, 1977 (42 FR 34281).

(h) The Oregon State Compliance Manual modeled after the Federal Field Operations Manual was developed by the State and was approved by the Assistant Secretary on June 24, 1977 (42 FR 34281).

(i) In accordance with 29 CFR 1952.108(c) Oregon has adopted administrative regulations providing procedures for conduct and scheduling of inspections, extension of abatement dates, variances, employee complaints, posting of citations and notices, effective July 1, 1974, with revisions incorporated in rules effective August 1, 1982. Likewise, the Workers' Compensation Board adopted rules effective December 20, 1973, governing practice and procedures for contested cases with revisions incorporated in rules effective August 2, 1982. Also, the Oregon Bureau of Labor and Industries which was assigned responsibility for investigations of complaints of discrimination under the Oregon Safe Employment Act provided its rules effective June 21, 1981, and March 21, 1982. These regulations and rules with supplemental assurances dated May 24, 1982, August 13, 1982 and August 27, 1982 were approved by the Assistant Secretary on September 15, 1982.

(j) In accordance with the requirements of 29 CFR 1952.4, Oregon State recordkeeping and reporting regulations adopted on June 4, 1974, and revised on January 1, 1978, and September 24, 1979, were approved by the Assistant Secretary on August 28, 1980.

(k) Oregon occupational safety and health standards as effective as Federal standards have been promulgated and subsequently amended to reflect changes in and additions to Federal standards, and approved by the Regional Administrator on: October 25, 1974 (39 FR 38037), January 16, 1975 (40 FR 2885), August 22, 1975 (40 FR 36817), September 18, 1975 (40 FR 43102), October 30, 1975 (40 FR 56583), December 12, 1975 (40 FR 57804), December 18, 1975 (40 FR 58704), February 17, 1976 (41 FR 7186), March 16, 1976 (41 FR 11087), April 14, 1978 (43 FR 15806), July 28, 1978 (43 FR 33834), August 8, 1978 (43 FR 35125), May 18, 1979 (44 FR 29174), December 11, 1979 (44 FR 71469), June 27, 1980 (45 FR 43483), July 15, 1980 (45 FR 47545), November 7, 1980 (45 FR 74104), December 9, 1980 (45 FR 81132), February 27, 1981 (46 FR 14489), May 1, 1981 (46 FR 24750), September 22, 1981 (46 FR 46856), October 13, 1981 (46 FR 50444), and May 25, 1982 (47 FR 22622).

(l) In accordance with the requirements of 29 CFR 1952.108(g), the State of Oregon developed and implemented administrative rules relative to an on-site voluntary compliance consultation program which is limited to the public sector, which were approved by the Assistant Secretary on September 15, 1982. (The State operates a voluntary compliance consultation program for the private sector under section 7(c)(1) of the Occupational Safety and Health Act in accordance with the regulations of 29 CFR Part 1908.)

This certification covers all occupational safety and health issues covered under the Federal program (with the exception of the longshoring industry) as well as the State's program covering State and local government employees.

Location of the Plan and Its Supplements for Inspection and Copying

Copies of the supplements along with the approved plan, may be inspected and copied during normal business hours at the following locations:

Office of the Director of Federal Compliance and State Programs, Occupational Safety and Health Administration, Room N–3619, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210

Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174

Office of the Director, Workers' Compensation Department, Labor and Industries Building, Salem, Oregon 97310

Effect of Certification

The Oregon plan is certified effective September 15, 1982, as having completed all developmental steps on or before December 28, 1975. This certification attests to structural completion, but does not render judgment on adequacy of performance. The Oregon occupational safety and health program will be monitored and evaluated for a period of not less than one year after publication of this certification to determine whether the State program in operation provides for an effective program of enforcement. The Assistant Secretary will then determine whether Federal authority should be withdrawn with respect to issues covered by the plan pursuant to Section 18(e) of the Act.

Level of Federal Enforcement

In accordance with 29 CFR 1902.35 Federal enforcement authority under Sections 5(a)(2), 8, 9, 10, 13, and 17 of the Act (29 U.S.C. 654(a)(2), 657, 658, 659, 662, and 666) and Federal standards authority under Section 6 of the Act (29 U.S.C. 655) will not be relinquished during the evaluation period. However, under the terms of an operational status agreement entered into between Occupational Safety and Health Administration and the Oregon Workers' Compensation Department effective April 28, 1975 (40 FR 18428) and as amended effective August 2, 1977 (42 FR 40268) and August 8, 1978 (43 FR 36624), the exercise of this authority will continue to be limited to, among other things: complaints about employee discrimination; enforcement of new Federal standards including temporary emergency standards until adopted by the State, enforcement of standards in the Warm Springs Indian Reservation and in the longshoring industry which are excluded from plan coverage; investigations for fulfillment of monitoring obligations under Section 18(e) and (f) of the Act; and abatement dates from OSHA-issued citations, which extend beyond the date of State assumption of inspection responsibility. Pursuant to 29 CFR 1954.3(f)(1) the agreement provides for resumption of Federal enforcement activity for failure to substantially comply with the provisions of the agreement or as a result of evaluation or other factors.

List of Subjects in Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

In accordance with this certification 29 CFR 1952.109 is hereby amended to reflect successful completion of the developmental period by changing the title of the section and by adding a paragraph (l) as follows:

§ 1952.109 Completion of developmental steps and certification.

* * * * *

(l) In accordance with § 1902.34 of this chapter, the Oregon occupational safety and health plan was certified effective September 15, 1982, as having completed all developmental steps specified in the plan as approved on December 28, 1972, on or before December 28, 1975. This certification attests to structural

completion, but does not render judgment on adequacy of performance.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Portland, Oregon, this 15th day of September 1982.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 82–26408 Filed 9–23–82 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 888e

Disposition of Conscientious Objectors

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its military personnel regulations by removing Part 888e of Chapter VII, Title 32. The source document, Air Force Regulation (AFR) 35–24 has been revised. It is intended for internal guidance and has limited applicability to the general public. This action is a result of departmental review in an effort to insure that only regulations which substantially affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: September 24, 1982.

FOR FURTHER INFORMATION CONTACT: Ms Hughes, AF Manpower and Personnel Center, CAKO, Randolph AFB, TX 78148, (512) 652–2148.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 888e

Conscientious objectors, Investigations, Military personnel, Selective service system.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, 32 CFR is amended by removing Part 888e.

(10 U.S.C. 8012.)

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 82–26346 Filed 9–23–82; 8:45 am]

BILLING CODE 3910–01–M

VETERANS ADMINISTRATION

38 CFR Part 21

Definition of Program of Education

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: This regulation updates the definition of a program of education and makes other minor, technical changes. Previously, the regulation made an incorrect reference to a section of the United States Code. This regulation now agrees with the law.

EFFECTIVE DATE: September 7, 1982.

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

SUPPLEMENTARY INFORMATION: On pages 24603 and 24604 of the Federal Register of June 7, 1982, there was published notice of intent to amend Part 21 to make technical corrections in the definition of a program of education.

Interested people were given 30 days in which to submit comments, suggestions or objections regarding the proposal. The Veterans Administration received no comments. Accordingly, the agency is adopting this proposal.

The Veterans Administration has determined that this regulation does not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The annual effect on the economy will be less than $100 million. The regulation will not result in any major increases in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA) 5 U.S.C. 601–612. This regulation is exempt under 5 U.S.C. 605(b) from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. This certification is based on the fact that this regulation will affect only individual benefit recipients. They will have no significant impact on small entities, i.e. small businesses, small private and nonprofit organizations, and small governmental jurisdictions.

(Catalog of Federal Domestic Assistance number for the program affected by the amended regulation is 64.111.)

List of Subjects in 38 CFR Part 21

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

Approved: September 7, 1982.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

The Veterans Administration amends 38 CFR Part 21 as follows:

Section 21.4230 is revised to read as follows:

§ 21.4230 Requirements.

(a) *Definition.* A program of education—(1) Is a combination of subjects or unit courses pursued at a school which is generally accepted as necessary to meet requirements for a predetermined educational, professional or vocational objective;

(2) Under chapter 34 may consist of subjects or courses which fulfill requirements for more than one objective if all objectives pursued are generally recognized as being related to a single career field; or

(3) Is any unit course or subject or combination of courses or subjects, pursued by an eligible veteran at an educational institution, required by the Administrator of the Small Business Administration as a condition to obtaining financial assistance under the provisions of 15 U.S.C. 636. (38 U.S.C. 1652(b), 1670, 1691(a))

(d) *Educational.* An educational objective is one that leads to the awarding of a diploma, degree or certificate which reflects educational attainment.

(c) *Professional or vocational.* A professional or vocational objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program consists of a series of courses not leading to an educational objective, such courses must be directed toward attainment of a designated professional or vocational objective.

(d) *Selection—Chapter 34.* The Veterans Administration will approve a program of education under Chapter 34 selected by an eligible veteran or serviceperson if it meets the requirements of paragraph (a) of this section; has an objective as described in paragraph (b) or (c) of this section; the courses or subjects in the program are approved for Veterans Administration training; and the veteran or serviceperson is not already qualified for the objective of the program, except: (38 U.S.C. 1671)

(1) A course or courses at the secondary school level for persons who have previously received a secondary school diploma or an equivalency certificate and deficiency courses needed or required to qualify for an educational or training program may be authorized under the provisions of § 21.4235, and

(2) An eligible veteran may receive up to 6 months educational assistance, or the equivalent in part-time assistance, for training in a program of education in which the veteran is already qualified, provided that the program pursued is refresher training to permit the veteran to update knowledge and skills and to be instructed in the technological advances which have occurred in the veteran's field of employment during and since the veteran's period of service. The program of education must be a course to be taken after the date of the veteran's discharge or release from active duty. It may be to update skills learned either during or prior to service but not for skills first acquired after discharge from service. Educational assistance allowance paid under this paragraph (d)(2) will be charged against the veteran's basic entitlement.

(e) *Provisional—Chapter 35—child.* When the Veterans Administration approves an application for educational assistance under chapter 35, the Veterans Administration will inform the eligible child and, if a minor, the parent or guardian also of the need to develop a program of education consistent with paragraphs (a) and (b) or (c) of this section. An educational plan may be submitted and approved without counseling if it meets the requirements of paragraphs (a) and (b) or (c) of this section. (38 U.S.C. 1713, 1720)

(f) *Selection—Chapter 35—spouse or surviving spouse.* The Veterans Administration will approve a program of educational assistance selected by an eligible spouse or surviving spouse if—

(1) It meets the requirements of paragraphs (a) and (b) or (c) of this section, and

(2) The individual is not already qualified for the objective of the program of education. (38 U.S.C. 1721)

[FR Doc. 82-26343 Filed 9-23-82; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 601

Procurement of Property and Services; Amendments to Postal Contracting Manual

AGENCY: Postal Service.

ACTION: Amendments to the Postal Contracting Manual.

SUMMARY: The Postal Service announces revisions of section 1, part 4, of the Postal Contracting Manual, which deals with the authority and responsibility for Postal Service procurement. In general, contracting authority of postal officers has been increased, and additional delegations of contracting authority are made to certain offices. Also, the text of this part of the Manual has been revised for greater readability, and certain renumbering of the sections has been done.

EFFECTIVE DATE: September 13, 1982.

FOR FURTHER INFORMATION CONTACT: Eugene A. Keller, (202) 245-4818.

SUPPLEMENTARY INFORMATION: The Postal Contracting Manual, which has been incorporated by reference in the Code of Federal Regulations (See 39 CFR 601.100) has been amended by the issuance of PCM Circular 82-1, dated September 13, 1982.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the **Federal Register** and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the Postal Service. (For other availability of the Postal Contracting Manual, see 39 CFR 601.104).

List of Subjects in 39 CFR Part 601

Government procurement.

Explanation of these amendments to the Postal Contracting Manual follows:

Explanation of Changes

This circular revises *Postal Contracting Manual,* Section 1, Part 4, Procurement Responsibility and Authority. The text was revised for readability and most of the paragraph numbers do not coincide with the old. Those that have been renumbered are:

Ex. 1-401.1a includes what was 1-407.1 (d)-(h), 1-407.2 (a)(3)-(b), and 1-407.3
Ex. 1-401.1b includes what was 1-407.2(d).
1-401.2b was 1-407.4 (a), (c), (d), and (e).
1-401.2c was 1-407.4(b).
1-401.3 was 1-407.1 (a)-(c).
1-402 was 1-401.
1-402.2 was 1-403.3.
1-403.1 was 1-402.
1-403.2 was 1-403.1 and 1-406.
1-403.3 was 1-403.2.
1-407.4 was 1-407.2(a) (1) and (2).

Policy changes are:

1. The Assistant for Procurement Policy is now the Senior Advisor, Procurement Policies.

2. The dollar thresholds for legal reviews of contracts increase by $50,000, except the threshold for solicitations for construction contracts which increases from $25,000 to $100,000.

3. Show-cause letters must now be submitted for legal review.

4. Contracting authority changes as follows:

a. The limit on the RPMG's authority to contract for A/E-services increases from $300,000 to $500,000.

b. The limit on the RPMG's authority for lease acquisition increases from $300,000 to $500,000.

c. The MSC Managers and the Postmasters for Chicago, Washington, DC, and Los Angeles now have authority for contract postal unit contracting.

d. The Managers of the area supply center Contract Branches now have direct contracting authority.

e. The Director, Office of Real Estate, has real estate acquisition authority (formerly held by the General Managers, Facilities Procurement Divisions, and the Director, Office of Design and Construction).

f. The General Managers of the regional Procurement Divisions, now have direct contracting authority.

g. The Managers, Procurement Services Offices, now have direct contracting authority.

h. Inspectors-in-Charge receive local purchasing authority ($1,500).

This circular obsoletes the following *Postal Bulletin* notices:

1. PB 21348, 4-22-82, p. 7, "Contracting Authority for CPUs."

2. PB 21362, 7-29-82, p. 2, "Contracting Authorities—Summary."

(5 U.S.C. 552(a), 39 U.S.C. 401, 404, 410, 411)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 82-26372 Filed 9-23-82; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6329

[AA-50218]

Alaska; Classification and Opening of Lands Withdrawn by Public Land Order Nos. 5150, 5173, 5178, 5179, 5180, and 5184, as Amended, Modified or Corrected

Correction

In FR Doc. 82-24594 beginning on page 39495 in the issue of Wednesday,

September 8, 1982, make the following corrections:

1. On page 39496, middle column, the 28th line now reading "T.S., R.3 E." should have read "T.5 S., R.3 E.".

2. On page 39497, third column, in the 33rd line, "and sec. 25" should have read "and sec. 35".

BILLING CODE: 1505-01-M

Proposed Rules

Federal Register
Vol. 47, No. 186
Friday, September 24, 1982

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 315

Career and Career-Conditional Employment

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: These proposed regulations establish an authority under which persons having at least 1 year of service under the Panama Canal Employment System (PCES) may be given noncompetitive career-conditional or career appointments in the competitive civil service.

DATE: Comments must be received on or before November 23, 1982.

ADDRESS: Written comments may be sent to Richard B. Post, Associate Director, Staffing Group, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, or delivered to Room 6F08, 1900 E Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: William Bohling, Noncompetitive Staffing Branch, (202) 632–6000.

SUPPLEMENTARY INFORMATION: Section 1212 of Public Law 96–70, the Panama Canal Act of 1979, provides for replacement of the Canal Zone Merit System by the Panama Canal Employment System (PCES), and further provides for appropriate interchange of United States citizen personnel between the PCES and the competitive civil service. The PCES became effective March 31, 1982. Its personnel regulations on most subjects are patterned on or require PCES agencies to follow those of the competitive civil service. The only significant differences between the PCES and the competitive civil service are: (1) That 11 points are added to the scores of Panamanian eligibles on registers although veterans preference eligibles still receive 5 or 10 extra points and veterans preference applies within score groups; (2) that basic pay is based on local pay rates; (3) that PCES regulations contain no provisions relating to labor-management relations; and (4) that service of non-Panamanian employees appointed in the PCES on or after October 1, 1979, is limited to 5 years.

The proposed regulations provide comparable noncompetitive appointment eligibility for present and former employees of the PCES and its predecessor, the Canal Zone Merit System. Basic eligibility for noncompetitive appointment is established after 1 year of service under a career-conditional appointment in either system. Eligible employees who are entitled to veterans preference or who have 3 years of substantially continuous service under the PCES, the Canal Zone Merit System, or a combination of the two may be noncompetitively appointed in the competitive civil service at any time. Other eligible employees may be noncompetitively appointed within 3 years after separation from the PCES or Canal Zone Merit System. Service in Panama in a position excluded from the Canal Zone Merit System or the PCES, which immediately follows qualifying service under one or both of those systems, may extend noncompetitive eligibility.

In proposing regulations which extend to PCES employees the noncompetitive appointment benefits previously afforded to employees of the Canal Zone Merit System, OPM recognizes both the close parallel between the PCES, the Canal Zone Merit System, and the competitive civil service and the intent of the Panama Canal Treaty and Panama Canal Act of 1979 to maintain as much as possible the level of benefits available to U.S. employees in Panama before adoption of the Treaty.

E.O. 12291, Federal Regulation

OPM had determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only the procedures used to appoint certain employees in Federal agencies.

List of Subjects in 5 CFR Part 315

Government employees.

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

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

Accordingly, the U.S. Office of Personnel Management proposes to revise 5 CFR 315.601 to read as follows:

§ 315.601 Appointment of former employees of Canal Zone Merit System and Panama Canal Employment System.

(a) *Agency authority.* An agency may appoint noncompetitively, for other than temporary or term employment, a United States citizen separated from a career or career-conditional appointment under the Canal Zone Merit System, which was in effect before March 31, 1982, or under the Panama Canal Employment System, which became effective on March 31, 1982.

(b) *Service requirement.* An agency may appoint such a former employee under this section only when, immediately prior to separation from a qualifying appointment, the employee served continuously for at least 1 year under a nontemporary appointment in the Canal Zone Merit System, the Panama Canal Employment System, or a combination of nontemporary appointments in the two systems.

(c) *Time limits.* (1) There is no time limit on the appointment under this section of an employee who:

(i) Is a preference eligible; or

(ii) Has completed at least 3 years of service, which did not include any break in service longer than 30 days, under one or more career-conditional or career appointments in the Canal Zone Merit System and/or the Panama Canal Employment System.

(2) An agency may appoint under this section an employee who does not meet the conditions in (c)(1) above provided no more than 3 years have elapsed since:

(i) separation from a qualifying Canal Zone Merit System or Panama Canal Employment System appointment; or

(ii) separation from service in Panama in a position excluded from the Canal Zone Merit System or Panama Canal Employment System, when such service immediately followed service under a qualifying appointment in one of those systems.

(d) *Tenure on appointment.* (1) On appointment under paragraph (a) of this section, a former career employee of the Canal Zone Merit System or Panama Canal Employment System becomes a career employee.

(2) A former Canal Zone Merit System and/or Panama Canal Employment System employee whose service from the date of career-conditional appointment in the Canal Zone Merit System or Panama Canal Employment System through the date of noncompetitive appointment under this section, inclusive, does not include any break in service of more than 30 days and totals at least 3 years becomes a career employee.

(3) All other former Canal Zone Merit System and Panama Canal Employment System employees become career-conditional employees.

(e) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section automatically acquires a competitive status:

(1) On appointment, if he or she has satisfactorily completed a 1-year probationary period under the Canal Zone Merit System and/or the Panama Canal Employment System.

(2) On satisfactory completion of probation in accordance with § 315.801(a)(3) if he or she had not completed a 1-year probationary period under the Canal Zone Merit System or Panama Canal Employment System.

(Pub. L. 96-70)

[FR Doc. 82-26373 Filed 9-23-82; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Proposed Increase in Payment Rates for Services With Respect To Reserve Tonnage Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice proposes to increase the rates of payment to raisin handlers for receiving, storing, fumigating, and handling reserve tonnage raisins during and beyond the crop year of acquisition. The proposal is based on a recommendation of the Raisin Administrative Committee, which works with the Department in administering the marketing agreement and order program for California raisins.

DATES: Comments must be received by October 12, 1982.

ADDRESSES: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250, where they will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447-5697.

SUPPLEMENTARY INFORMATION:

This proposal has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been determined to be a "non-major" rule.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would result in only minimal costs being incurred by the regulated 20 handlers.

J. S. Miller, has determined that a comment period of less than 60 days is warranted so the Committee can begin paying raisin handlers and other persons as soon as practicable for those services at the increased rates.

To initiate the proposed rate increases, it is necessary to amend § 989.401 (a)(1) and (b) of Subpart-Schedule of Payments (7 CFR 989.401; 46 FR 37054). This action would be taken under § 989.66(f) of the marketing agreement and Order No. 989 (7 CFR 989), both as amended, regulating the handling of raisins produced from grapes grown in California (hereinafter referred to collectively as the "order"). The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The proposed action would increase handler payment rates for: (1) Receiving, storing, fumigating, and handling reserve tonnage raisins during the crop year of acquisition from $32.50 to $36 per ton; and (2) holding reserve tonnage raisins beyond the crop year of acquisition from $1.62 to $1.80 per ton for each month of the three-month period ending November 30, and from 84 cents to 93 cents per ton each month of the next nine months.

Funds to pay these costs are deducted from proceeds from the sale of reserve tonnage raisins held by handlers for the account of the Committee. Net proceeds from such sales are remitted to equity holders in the reserve pool.

List of Subjects in 7 CFR Part 989

Marketing Agreements and Orders, Grapes, Raisins, and California.

PART 888e—DISPOSITION OF CONSCIENTIOUS OBJECTORS [REMOVED]

The proposal to revise § 989.401 (a)(1) and (b) of Subpart—Schedule of Payments (7 CFR 989.401; 46 FR 37054) is as follows:

Subpart—Schedule of Payments

§ 989.401 Payments for services performed with respect to reserve tonnage raisins.

(a) *Payment for crop year of acquisition*—(1) *Receiving, storing, fumigating, and handling.* Each handler shall, beginning August 15, 1982, be compensated at the rate of $36 per ton (natural condition weight at the time of acquisition) for receiving, storing, fumigating, and handling the reserve tonnage raisins, as determined by the final reserve tonnage percentage, acquired during a particular crop year and held by him for the account of the Raisin Administrative Committee during all any part of the same crop year: *Provided,* That reserve tonnage acquired during the 1981-82 crop year and held as of August 15, 1982, shall be comnpensated at the rate of $36 per ton (natural condition weight at the time of acquisition).

(2) * * *

(b) *Additional payment for reserve tonnage raisins held beyond the crop year of acquisition.* Additional payment for reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler holding such raisins for the account of the Committee on August 15 and the following September 1 shall be compensated for storing, handling, and fumigating such raisins at the rate of $1.80 per ton per month, or any part thereof, for each month of the three-month period ending November 30, and 93 cents per ton per month, or any part thereof, for each month of the next nine months. Such services shall be completed so that the Committee is assured that the raisins are maintained in good condition.

* * * * *

Dated: September 20, 1982.

D. S. Kuryloski

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 82-26352 Filed 9-23-82; 8:45 am]
BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1430

Dairy Products

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth a procedure for implementing certain changes in the dairy price support program. Such changes are authorized by the Omnibus Budget Reconciliation Act of 1982, which provides that during the period of October 1, 1982, through September 30, 1985, the Secretary of Agriculture may provide for the deduction of 50 cents per hundredweight from the sale of all milk marketed commercially by producers. The deductions would be remitted to the Commodity Credit Corporation to offset a portion of the cost of the price support program. Because of the substantial purchases of dairy products by the U.S. Government under the support program, the Secretary has determined that the deductions should become effective on December 1, 1982. Comments on whether the dairy collection plan should be implemented in the manner set forth in this proposed rule are invited.

DATE. Comments should be received by the Department by November 8, 1982, to be assured of consideration.

ADDRESS: Written comments should be sent to the Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

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

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified as a "major" action since the rule would result in an annual effect on the economy of $100 million or more.

The title and number of the Federal Assistance program to which this proposed rule applies are: Title—Commodity Loans and Purchases; Number—10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

Statutory Authority for Proposed Rule

Section 201 of the Agricultural Act of 1949 was amended on September 8, 1982, by the Omnibus Budget Reconciliation Act of 1982, to specify that during the period of October 1, 1982, through September 30, 1985, the Secretary may provide for a deduction of 50 cents per hundredweight from the proceeds of the sale of all milk marketed commercially by producers. These deductions are to be remitted to the Commodity Credit Corporation to offset a portion of the cost of the price support program. The authority would not apply for any fiscal year for which the Secretary projects that the annual price support purchases will be less than 5 billion pounds milk equivalent. If at any time during a fiscal year the Secretary estimates that the net price support purchases during that year will be less than 5 billion pounds, the authority for making deductions would not apply for the balance of the year.

It has been estimated that the net price support purchases of milk or the products of milk will exceed 5 billion pounds milk equivalent for the 1982–83 marketing year.

Summary of Proposed Rule

The proposed rule sets forth the administrative procedures that would be used to implement the deduction of 50 cents per hundredweight from the proceeds of the sale of all milk marketed commercially by producers. The provisions of the proposed rule would apply only to the milk that is marketed commercially by producers during those months for which the Secretary has announced that the deductions are required.

The Dairy Division of the Department's Agricultural Marketing Service would administer the proposed regulations and would be responsible for the collection and verification of all monies deducted from producers for remittance to the Commodity Credit Corporation.

The proposed regulations specify that any individual, partnership, corporation, association or other business unit that pays the individual producer for his milk would be the "responsible person" for remitting to the CCC the deduction of 50 cents per hundredweight from each producer's proceeds. Additionally, a producer who markets all or part of his own production in the form of milk or milk products to consumers, either direclty or through retail or wholesale outlets, also would be defined as a "responsible person" for remitting monies to the CCC. Such a producer would be required to remit an amount equal to 50 cents per hundredweight on the quantity of his own production used in such marketings. If the producer has additional milk production that is marketed to another "responsible person," the person receiving the milk would be required to make the deduction on that milk.

For milk marketed during a particular month, the proposed regulations prescribe that the deductions from a producer's proceeds be remitted to the CCC by the last day of the following month, or on the same date as final payment is made to the producer for such milk, whichever is earlier. In the case of a producer who markets milk of his own production during the month to consumers, such person would be required to remit the money due the CCC by the last day of the following month.

When remitting the monies to the CCC, each responsbile person would be required to report to the Dairy Division: (1) The identity of the responsible person, including such person's business address, (2) the month in which the applicable producer marketings occurred, and (3) the total amount of milk to which the remittance applies.

The proposed regulations also provide that the amounts due the CCC are to be remitted in the form of a check made payable to the "Commodity Credit Corporation." Checks and related reports would have to be mailed to the location designated by the Dairy Division in its instructions to responsible persons.

A late-payment charge would be assessed with respect to any responsible person's obligation that is due the CCC but which is remitted late. Such late-payment charge would be applied on the first day after the date that such obligation was due and would be applied again on the same day of each succeeding month to any such outstanding obligation, including any outstanding late-payment charge, until the obligation is paid. The amount of the late-payment charge would be based on a rate of interest determined periodically by the CCC, which currently is 17 percent per year.

Each responsible person would be required to maintain certain records for the purpose of demonstrating compliance with the regulations. Also, such persons would be required to make available all records and facilities pertaining to their operations as are necessary for determining compliance.

In addition, all records which would be required to be made available would have to be retained by the responsible person for a period of three years, which begins at the end of the month to which such records pertain, unless the Dairy Division notifies the responsible person that such records are necessary in connection with litigation. In such case, such records would have to be retained until the litigation is terminated or a waiver is granted by the Dairy Division.

List of Subjects in 7 CFR Part 1430

Milk, Agriculture, Price support programs, Dairy products.

Proposed Rule

Accordingly, it is proposed that 7 CFR Part 1430 be amended by inserting immediately before § 1430.282 the subpart heading "Subpart—Price Support Program" and by adding immediately after § 1430.282 a new subpart, consisting of §§ 1430.291–1430.299 which would read as follows:

PART 1430—DAIRY PRODUCTS

Subpart—Regulations Governing Certain Deductions on Milk Marketings of Producers

Sec.

Authority.—Sec. 201(d) of the Agricultural Act of 1949, as amended, (7 U.S.C. 1446); Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714).

Subpart—Regulations Governing Certain Deductions on Milk Marketings of Producers

§ 1430.291 General statement.

This subpart provides for the implementation of certain provisions of the dairy price support program, which is authorized by section 201 of the Agricultural Act of 1949, as amended (referred to as the "Act"). Section 201(d)(2) of the Act specifies that during the period of October 1, 1982, through September 30, 1985, the Secretary may provide for a deduction of 50 cents per hundredweight from the proceeds of the sale of all milk marketed commercially by producers, including producers who market milk of their own production directly to consumers. The deductions are to be remitted to the Commodity Credit Corporation to offset a portion of the cost of the dairy price support program. The Act also specifies that the Secretary's authority for requiring such deductions shall not apply for any fiscal year for which the Secretary estimates that the net price support purchases of milk or the products of milk would be less than 5 billion pounds milk equivalent. In addition, if at any time during a fiscal year the Secretary should estimate that such net price support purchases during that fiscal year would be less than 5 billion pounds milk equivalent, the Secretary's authority for requiring such deductions shall not apply for the balance of that fiscal year. The regulations set forth in this subpart establish the administrative procedures that will be used in carrying out this phrase of the dairy price support program whenever it is in operation.

§ 1430.292 Definitions.

For purposes of this subpart, the terms listed below shall have the following meanings:

(a) *"United States"* means the 50 states of the United States of America, the District of Columbia, Puerto Rico, and the affected territories of the United States of America.

(b) *"Department"* means the United States Department of Agriculture.

(c) *"Secretary"* means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in his stead.

(d) *"Dairy Division"* means the Dairy Division of the Department's Agricultural Marketing Services.

(e) *"CCC"* means the Commodity Credit Corporation.

(f) *"Person"* means any individual, partnership, corporation, association, or other business unit.

(g) *"Producer"* means any dairy farmer within the United States who produces milk.

(h) *"Responsible person"* means:

(1) Any person who pays a producer for milk marketed commercially by the producer. This shall include a handler regulated under a Federal milk order to the extent of any payments for milk that are transmitted by the handler to the market administrator for transmittal by the market administrator to individual producers.

(2) Any producer with respect to milk of his own production that he commercially markets in the form of milk or milk products to consumers, either directly or through retail or wholesale outlets.

(i) *"Deduction"* means the money that is subtracted under the authority described in § 1430.291 from the proceeds of the sale of all milk marketed commercially by producers.

§ 1430.293 Period of applicability.

The provisions of this subpart shall apply only to the milk that is marketed commercially by producers during those months for which the Secretary has announced that the deductions described in § 1430.291 are required.

§ 1430.294 Responsibility for administration of regulations.

The Dairy Division shall have the responsibility for administering this subpart.

§ 1430.295 Remittance of producer deductions to CCC.

The following procedures shall apply with respect to remitting to the CCC the deductions described in § 1430.291:

(a) Each responsibile person who pays a producer for milk marketed commercially during the month shall remit to the CCC by the last day of the following month, or at the time of making final payment to the producer for such milk, whichever is earlier, an amount equal to 50 cents per hundredweight times the quantity of milk for which payment is being made.

(b) Each responsible person who markets milk of his own production to consumers (either directly or through retail or wholesale outlets) in the form of milk or milk products during the month shall remit to the CCC by the last day of the following month an amount equal to 50 cents per hundredweight times the quantity of such person's own production used in such marketings.

(c) When remitting amounts in accordance with paragraphs (a) and (b) of this section, each responsible person shall file a report prescribed by the Dairy Division showing:

(1) The identity of the responsible person, including such person's business address;

(2) The month in which the applicable producer marketings occurred; and

(3) The total pounds of milk to which the remittance applies.

(d) The amounts remitted under this section shall be in the form of a check made payable to "Commodity Credit Corporation."

(e) Checks and reports required under this section shall be mailed to the location designated by the Dairy Division.

§ 1430.296 Responsibility for records and facilities.

(a) *Records to be maintained.* Each responsible person shall maintain records in a manner that will demonstrate compliance with the provisions of this subpart.

(b) *Availability of records and facilities.* Each responsible person shall make available all records and facilities pertaining to such person's operations that are necessary to determine compliance with the provisions of this subpart.

(c) *Retention of records.* All records required under this subpart shall be retained by the responsible person for a period of three years that shall begin at the end of the month to which such records pertain, unless the Dairy Division notifies the responsible person that such records are necessary in connection with litigation. In such case, the records shall be retained until the litigation is terminated or a waiver is granted by the Dairy Division.

§ 1430.297 Adjustment of accounts.

Whenever an audit of any responsible person's reports, records, books or accounts discloses adjustments to be made in monies due the CCC or due such person from the CCC, such responsible person shall be notified of any such amount due. Any such amount due the CCC shall be remitted by the next date for remitting deductions as provided in § 1430.295.

§ 1430.298 Late-payment charge.

Any unpaid obligation of a responsible person under this subpart shall be increased by a late-payment charge which shall be applied on the first day after the date such obligation was due and on the same day of each succeeding month until such obligation is paid. The total obligation due from such person shall include any unpaid charges computed previously under this section. The charge shall be an amount equal to one-twelfth (rounded to the nearest one-hundredth of one percent) of the annual rate of interest announced by the CCC under 7 CFR 1403.5.

§ 1430.299 Continuing obligations.

Obligations of a responsible person that have arisen under this subpart shall continue in effect until the final disposition of such obligations even though the Secretary has announced that the deductions described in § 1430.291 are no longer required.

Signed at Washington, D.C., on September 21, 1982.

Everett Rank,

Executive Vice President, Commodity Credit Corporation (CCC).

[FR Doc. 82-26410 Filed 9-23-82; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1701

Equipment Contract Requirements Proposed Revision to REA Contract Form 198

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to revise REA Contract Form 198, "Equipment Contract." The REA Contract Form 198 provides REA borrowers with a standardized contract document with which equipment for electric generating stations, substations and transmission line construction can be purchased. The proposed revision to the existing document is intended to update the form by incorporating various clarifications and improvements gained from past experience and by including numerous comments received from the public.

DATE: Public comments must be received by REA no later than November 23, 1982.

ADDRESS: Submit written comments to Frank W. Bennett, Director, Power Supply Division, Rural Electrification Administration, Room 0232, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Holt, Chief, Power Plants Branch, Rural Electrification Administration, Room 0236, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382-1390. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to revise REA Contract Form 198, "Equipment Contract." 7 CFR Part 1701, Appendix A—REA Bulletins, will be amended to include the revised REA Contract Form 198 upon its issuance as a final rule. This proposed action has been issued in conformance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies; or (3) result in significant adverse effects on competition, employment, investment or productivity and therefore has been determined to be "not major." This action is not subject to the Regulatory Flexibility Act or to OMB Circular A-95 review requirements. This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

This revision incorporates various clarifications and improvements gained from past experience and includes numerous comments received from the public resulting from the Advance Notice of Proposed Rulemaking which was published in the **Federal Register** on July 31, 1981. The most significant change is the incorporation of the informal bidding procedure permitted by the May 23, 1973, Supplement to REA Bulletin 40-6.

REA hereby solicits comments and recommendations from interested parties regarding the proposed revision to REA Contract Form 198.

A copy of the proposed REA Contract Form 198 is available upon request from the address indicated above. All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address.

List of Subjects in Part 1701

Administrative practice and procedure, Electric power plants, Electric utilities.

Dated: August 23, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-26155 Filed 9-23-82; 8:45 am]

BILLING CODE 3410-15-M

Packers and Stockyards Administration

9 CFR Parts 201 and 203

Regulations and Policy Statements; Review of Existing Regulations

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Notice of proposed rulemaking; review of existing regulations.

SUMMARY: This notice proposes to remove three recordkeeping and accounting regulations and to retain, in their present form, two regulations concerning the responsibilities of agents in accounting to their principals. It

proposes to revise and consolidate four additional accounting regulations into two and to consolidate the two regulations and one policy statement authorizing the disposal of records into a single regulation.

This proposal would also revise and consolidate eight trade practice regulations into a single, simplified regulation. Three other trade practice regulations involving employment restrictions, solicitation of consignments, and gratuities would be removed. One regulation concerning price guarantees and one policy statement concerning payment of buyers' expenses would be retained in their current form.

DATE: Comments must be received on or before November 23, 1982.

ADDRESS: Comments may be mailed to the Administrator, Packers and Stockyards Administration, Room 3039, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. Comments received may be inspected during normal business hours in the office of the Administrator.

FOR FURTHER INFORMATION CONTACT: John A. Sands, Jr., Director, Livestock Marketing Division, (202) 447–6951 or Kenneth Stricklin, Chief, Livestock Procurement Branch, (202) 447–6772.

SUPPLEMENTARY INFORMATION: This is the fourth group of regulations and policy statements selected for review in the Revised Plan of Review published in the **Federal Register** (46 FR 25279) by the Packers and Stockyards Administration in July 1981.

In developing this proposal, consideration has been given to the comments filed in response to two earlier publications in the **Federal Register** (44 FR 71802; 45 FR 21168) which outlined the Administration's plans for review of the existing regulations and policy statements. Consideration has also been given to the recommendations of an agency task force which were widely circulated throughout the livestock marketing and meat packing industries and to the comments received from industry groups and individuals as a result of the circulation of the task force report.

The following proposal would remove §§ 201.46, 201.52, 201.54, 201.63, and 201.65 (9 CFR 201.46, 201.52, 201.54, 201.63, and 201.65). Sections 201.55 and 201.61 (9 CFR 201.55 and 201.61) would be revised. Sections 201.43 and 201.111 (9 CFR 201.43 and 201.111) would be revised and consolidated as § 201.43 (9 CFR 201.43). Sections 201.49 and 201.107 (9 CFR 201.49 and 201.107) would be revised and consolidated as § 201.49 (9 CFR 201.49). Sections 201.50 and 201.101 (9 CFR 201.50 and 201.101) and policy statement 203.4 (9 CFR 203.4 would be revised and consolidated as § 201.50 (9 CFR 201.50) of the regulations. Sections 201.53 and 201.102 (9 CFR 201.53 and 201.102) would be revised and consolidated as § 201.53 (9 CFR 201.53).

This proposal would also consolidate and revise §§ 201.47, 201.56, 201.57, 201.58, 201.59, 201.60, 201.62, and 201.66(b) (9 CFR 201.47, 201.56, 201.57, 201.58, 201.59, 201.60, 201.62 and 201.66(b)) into § 201.56 (9 CFR 201.56). No changes are proposed in §§ 201.44, 201.45, 201.64, and 201.66(a) (9 CFR 201.44, 201.45, 201.64, and 201.66(a)) and policy statement 203.5 (9 CFR 203.5).

Accounting and Records

Prompt Payment and Accounting. Section 201.43 of the regulations prescribes the duty of market agencies selling livestock on a commission basis to provide prompt and accurate accounting to their customers and the responsibility of principals to promptly reimburse their agents for livestock purchases. Further, it sets forth the terms and conditions which packers, market agencies, and dealers are to follow in complying with the prompt pay provisions of section 409 of the Packers and Stockyards Act (7 U.S.C. 228b). Section 201.111 of the regulations requires prompt payment for live poultry purchases by packers and live poultry dealers and handlers.

The proposed revision would remove from § 201.43(a) the requirement that market agencies selling on commission routinely show the name of the purchaser on the account of sale furnished to the consignor. Entering the names of the buyers on the account of sale requires considerable time and effort on the part of the market agency on sale days during the peak of the workload of the office staff. The market agency would continue to be required to disclose the name of the buyer on its accounting to the consignor whenever livestock is sold to an owner, officer, or employee of the market agency. The market agency, in the normal course of business and pursuant to the Act, must maintain records sufficient to disclose the name of the buyer in every transaction, and the consignor, upon proper request to the market agency, would be entitled to know who purchased his livestock.

Paragraph (b) of § 201.43 would be retained without amendment. This paragraph implements the prompt payment and trust amendments enacted in 1976.

The cross references to §§ 201.61 and 201.68 in the current paragraph (d) of § 201.43 are no longer necessary. Section 201.43(d) will be replaced by § 201.111, thereby consolidating §§ 201.43 and 201.111.

Paragraph (c), as proposed, retains the current requirements for prompt payment for livestock by principals to their agents.

This proposal would also remove the current paragraph (d) of § 201.43. A new paragraph (d) would contain prompt payment requirements for live poultry by packers and live poultry dealers and handlers currently set forth in 201.111 of the regulations. These requirements remain necessary to assure timely payment to live poultry sellers and growers. The prompt payment requirements do not preclude the parties to a transaction from agreeing to credit terms.

The proposal would retain § 201.44 in its current form. This regulation requires market agencies to make prompt and accurate accounting to their principals for livestock purchased on commission, and specifies the minimum information which should be provided to a principal by his agent.

Inspection of Records by Principals. Market agencies are required by § 201.45 to make those records disclosing the charges paid by the market agency on behalf of a customer available to the customer for inspection. This notice proposes to retain this regulation. If does not require the market agency to create records; rather, it merely requires the market agency to make existing records documenting pertinent expenditures made on behalf of a customer available for inspection by the customer.

Daily Records. This proposal would remove § 201.46, which requires stockyard owners, market agencies, and dealers to make and keep a daily record of livestock received and shipped or bought and sold or otherwise disposed of each day. Records sufficient to fully and correctly disclose all transactions are required by section 401 of the Packers and Stockyards Act (7 U.S.C. 221). This statutory requirement is not altered by the proposed removal of § 201.46, but persons subject to the Act would be afforded greater flexibility in meeting the recordkeeping requirements of the Act.

Scale Tickets. The current requirements pertaining to the issuance of scale tickets in connection with livestock and live poultry transactions, §§ 201.49 and 201.107, would be retained and consolidated into a single regulation by this proposal. The Administration believes these requirements are necessary for the protection of livestock and poultry sellers. Scale tickets show

that livestock or poultry has been weighed and provide pertinent data to the parties about the weighing, including the actual weight, the number and kind of livestock or poultry weighed, the date, and identity of the weighmaster.

In addition, this proposal would require that scale tickets be used in serially numbered order. Such a requirement is implied, but not specifically required, in the present requirement that scale tickets be serially numbered. Control of scale tickets is important to the issuing firm and to the Administration in enforcing the Act in that it facilitates the identification of fraudulent or unauthorized scale tickets.

This proposal would add the requirement that the hot carcass weights be recorded and also retained as a part of a packer's business records when livestock is purchased on a carcass weight basis. A substantial volume of livestock purchased for slaughter is purchased on a carcass weight basis, and the Administration has found that some packers do not retain documentation of hot carcass weights after the carcasses are sold or otherwise disposed of. These records provide the Administration with essential information in connection with investigations of carcass weight purchases.

Finally, this proposal would remove paragraphs (c) of §§ 201.49 and 201.107. These paragraphs duplicate other provisions of the regulations dealing with accurate weights.

Disposal of Records. Authority for persons subject to the Act to dispose of records after specified time periods is currently contained in two regulations and one policy statement. Section 201.50 provides authority for stockyard owners, market agencies and dealers to dispose of certain records after two years. Authority for records disposal by poultry processors and live poultry dealers or handlers is contained in § 201.101 of the regulations and for meat packers in § 203.4 of the Statements of General Policy.

This proposal would consolidate these two provisions into a single regulation, thereby combining similar requirements for different segments of the industry. It does not impose any new recordkeepiing requirements or lengthen the retention periods. In fact, this proposal would reduce the retention period for certain packer records from three years to two years. It would also permit records to be kept on microfilm in lieu of retaining the actual documents.

Withholding of Information by Market Agency. Section 201.52 currently prohibits market agencies from furnishing livestock sales information to unauthorized parties. This notice proposes to remove § 201.52, and to leave decisions concerning release of information to the discretion of the market agency. Agency intervention would be warranted where release of information constitutes an unfair or deceptive practice. Removal will not preclude state and Federal agencies from requesting or requiring information necessary to administer or enforce state or Federal laws.

Trade Practices—Livestock Purchased From Consignment

The current trade practice regulations discussed under this heading are closely related, each dealing with some aspect of a market agency's responsibility to consignors when selling livestock on a commission basis. This proposal would rewrite and simplify §§ 201.47, 201.56, 201.57, 201.58, 201.59, 201.60, 201.62, and 201.66(b) to create a single regulation, thereby removing unnecessary repetition and confusing provisos and cross-references, and eliminating or reducing several of the current restrictions on the business activities of market agencies selling on commission.

Requirements of the Current Regulations (§§ 201.47, 201.56, 201.57, 201.58, 201.59, 201.60, 201.62, 201.66(b)). When a market agency is permitted to sell livestock to any person having a financial interest in the market agency performing the selling service, § 201.47 requires the livestock to be sold openly and at a price higher than the highest available bid. In such a sales transaction, the market agency must disclose to the consignor the nature of the relationship between the buyer and market agency.

These requirements and preconditions for selling livestock to any person having a financial relationship with the selling agency are essential requirements, which reflect and safeguard the fiduciary responsibility of the selling agent to his consignors. The disclosure requirement is of particular significance because it alerts the consignor to potential conflicts of interest.

Sections 201.56 and 201.62 specify the conditions which must be met when a market agency purchases consigned livestock for off-market purchasers. In such transactions, § 201.62 permits the market agency to assess only a selling commission, but allows an additional charge to the buyer to offset expenses incurred by the market agency in soliciting the off-market bids.

Section 201.57 prohibits market agencies selling livestock at auction from purchasing consigned livestock for speculative resale or permitting their owners, officers, and employees from purchasing consigned livestock for speculative resale. It further prohibits the auction markets from permitting their auctioneers, weighmasters, and certain other employees from purchasing consigned livestock for any purpose. Section 201.57 permits a market agency to purchase consigned livestock for market support. If market support livestock is resold by the market agency in one lot on the same day at a higher price, the market agency must remit the difference to the consignor, pursuant to § 201.59.

Section 201.58 requires each consignment to be sold on its own merits and prohibits string sales. Commingling of graded lots of livestock for sale with consignor's consent is allowed.

Sales of consigned livestock by a market agency to its owners, officers, employees, or other persons holding a financial interest in the market agency are prohibited by § 201.60(a), except where otherwise permitted by the regulations. Paragraph (b) of § 201.60 prohibits a market agency from selling its own livestock or livestock owned by its owners, officers, or employees in such a manner as to prejudice the interests of its consignors.

Section 201.66(b) prohibits a market agency from employing any person engaged in buying livestock as a dealer or market agency if that person engages in market agency or dealer transactions at the stockyard where he is employed.

Provisions of the Current Regulations Which Would be Removed By this Proposal. The existing regulations do not expressly prohibit owners, officers, and employees of a market agency from purchasing consigned livestock to fill oders which such persons themselves have obtained as distinguished from orders held or obtained by the market agency. The Packers and Stockyards Administration has, however, generally interpreted the provisions of §§ 201.56, 201.60(a), 201.62, and 201.66(b), taken as a group, to prohibit such persons in their individual capacities from filling orders from consignment.

The proposed § 201.56 will not preclude owners, officers, and employees of a market agency (except key employees whose duties in connection with auction sales involve activities which directly affect consignors' interests) from purchasing livestock from consignments to fill orders on an agency basis. It will continue to permit the market agency itself and wholly-owned subsidiaries of the market agency to fill orders. It is the opinion of the Administration that

removal of this restriction on a market agency's owners, officers,and non-key employees will foster increased demand in the local market and will not interfere with the enforcement of the Act. The regulations will continue to require that the market agency sell consigned livestock openly, at the highest available bid, and in such a manner as to best promote the interest of each consignor. It will further require full disclosure of the relationship between the market agency and buyer.

This proposal would also remove the prohibition against the assessment of a buying commission and the limitation on the charges for expenses when a market agency purchases consigned livestock to fill orders. Continuation of this limitation would be inconsistent with the general deregulation of rates previously accomplished by the Packers and Stockyards Administration.

The new proposed regulation would continue to prohibit auctioneers, weighmasters, and other key employees from purchasing from consignments for speculation or to fill orders. However, these employees would be permitted to purchase livestock for their own farm or ranching operation. Full disclosure to the consignor of the employee's relationship to the market agency would be required. If a situation arises in which a key employee's purchases from consignments for his ranch or farming operation are harmful to the interests of consignors, appropriate action will be taken.

Market agencies would continue to be permitted to purchase livestock for market support under this proposal. However, the provision requiring the market agency to remit any profit derived from the resale, in one lot on the same day, of such livestock, would be removed. Market agencies provide a service to their consignors when they purchase livestock to support the market. This proposal specifies the manner in which such purchases shall be made and requires disclosure to the consignor. Requiring the market agency to relinquish incidental profits while absorbing market support losses imposes an inequitable burden on the market agency and may discourage legitimate market support.

The prohibition against market agencies employing a dealer or order buyer if that person engages in any market agency or dealer activity at the market would be removed. While it is possible that a market agency might favor an employee in connection with sales of the employee's livestock, such a possibility does not warrant a *per se* prohibition.

Lastly, in lieu of a *per se* prohibition against string sales, the proposed regulation focuses on the market agency's responsibility to its consignors.

Provisions of the Proposed Regulation (201.56). Most of the trade practice regulations which deal with a market agency's responsibilities to consignors would be consolidated into a single, simplified regulation by this proposal. Several substantive changes are proposed to give greater flexibility to market agencies in filling orders on an agency basis and to remove restrictions on their business activities. This proposal affirms that the principal duty of a market agency selling on commission is to sell consigned livestock in such a manner as to best promote the interests of each consignor and to obtain the highest available price. In addition, it places greater emphasis on full disclosure as a means of protecting the interests of consignors.

Paragraph (a) of the proposed regulation states simply and concisely the market agency's responsibility to sell livestock in the best interest of its consignors. This requirement is essential to the agent-principal relationship which exits between the market agency and consignor.

Paragraph (b) circumscribes the conditions under which a market agency and its owners, officers, and employees may use consigned livestock to fill orders on an agency basis and requires that the livestock first be offered for sale in an open and competitive manner. Such a requirement is necessary to protect the legitimate interests of the consignors and the integrity of the marketing system.

The prohibition against purchasing livestock out of consignment for speculative resale is continued in paragraph (c) of this proposal. Market agencies and their owners, officers, and employees would be barred from purchasing consigned livestock for speculative resale. However, a proviso is included which permits market agencies to purchase consigned livestock to support their market when necessary to protect the legitimate interests of the consignors. When livestock is purchased for speculative resale, the buyer's interest is a quick resale at a profit. When that buyer is a market agency selling on commission, its self-interest in the transaction necessarily conflicts with its responsibility to consignors. Therefore, this regulatory prohibition continues to be viable and necessary.

Key employees of an auction market, such as the auctioneer, weighmaster, or ringman, would be prohibited from speculating out of consignments or filling orders for their own accounts by paragraph (d) of the proposed regulation. They would not be precluded by this regulation, however, from making incidental purchase for their own farm or ranching operation.

In order to adequately represent and protect the interests of consignors at an auction market, key employees engaged in conducting the auction sale must perform proficiently and with integrity. A failure to do so will result in some consignors receiving less than the highest available price for their livestock. Such a failure, unless flagrant, would not be readily detectable by the consignors and in many instances would not be detectable by the auction market operator.

The key element of this proposed regulation, which eases many of the restrictions on the business activities of selling agencies, is the disclosure requirement of paragraph (e). Under this provision, the market agency would be required to disclose to the consignor the name of the buyer and the nature of the relationship between the market agency and buyer whenever the market agency or its owners, officers, or employees purchase livestock out of consignment for any purpose. Such disclosure is an essential protection to the seller when an agent takes goods received on consignment into his own account or sells such goods to an owner, officer, or employee.

Trade Practices—Other

Market Conditions and Prices—False Reports. This notice proposes to consolidate §§ 201.53 and 201.102 into a single regulation which would proscribe false or misleading reports about market conditions and prices for livestock and live or dressed poultry. In addition, the proposal would apply this section to meat. Accurate reports of market conditions and prices are vital to all segments of the livestock, poultry, and meat packing industries. Ths regulation would make explicit the position that knowingly circulating false or misleading market information is an unfair trade practice. It would not impose any burden or restriction on the business activities of firms subject to the Act.

Gratuities. Section 201.54 of the regulations would be removed by this proposal. Stockyard owners, market agencies, and dealers are currently prohibited from giving gratuities to truckers by this regulation. Further, stockyard owners and market agencies cannot now receive or permit any

owner, officer, or employee to receive gratuities.

By removing this regulation, the Packers and Stockyards Administration would not be condoning bribery or the granting of unreasonaable inducements intended to procure an unfair preference or advantage. Such practices are considered to be violations of section 312(a) of the Act (7 U.S.C. 213(a)). Because it is unrealistic to establish by regulation an acceptable level of gratuities, each case will require individual scrutiny.

Actual Weights. When livestock is bought and sold on a weight basis, § 201.55 requires the transaction to be on the basis of the actual weights unless otherwise appropriately explained. This proposal would rewrite § 201.55 to make clear the requirements that the weight be an actual weight and that any adjustments to the actual weight be fully and accurately explained. This is an important and necessary regulation which does not impose an unreasonable burden on the industry.

Clearing Services. Section 201.61 of the current regulations prohibits practices resulting in a conflict of interest for selling agencies which finance or clear dealers buying out of consignments and for buying agencies who use livestock purchased from clearees to fill orders. In its present form, this regulation is more restrictive than is necessary to effectuate the intent and purposes of the Act under current marketing conditions.

This proposal rewrites § 201.61 to emphasize the prohibition against entering into any agreement, relationship, or association which may impair the market agency's loyalty to its consignors or principals. It proposes to remove the restriction against market agencies selling on commission furnishing clearing, financing, or bookkeeping services for independently operated and separately registered dealers. A prohibition is included, however, against a selling agency providing clearing services for any dealer who purchases livestock from consignments to such selling agency. Financing the operations of a dealer who purchases livestock from consignments would be prohibited by the proposed § 201.56(c). A conflict of interest exists when a market agency has a financial interest in dealer livestock bought out of consignment through either a clearing or a financing arrangement with the purchaser, and these prohibitions therefore remain necessary.

The restriction against a buying agency purchasing livestock from a dealer whose operations it clears would also be removed by proposed § 201.61. Disclosure to the buying agency's principal of the relationship between the buying agency and dealer would be required in such a situation. Prohibiting a buying agency, which also acts as a clearing agent, from using livestock from a clearee to fill orders removes a source of livestock from the buying agency's principal. However, to permit such purchases presents a potential conflict of interest. These opposing factors are reconciled by requiring full disclosure of the buying agency's relationship with the clearee.

Consignments Not To Be Solicited or Intercepted. Packers, market agencies, and dealers are restricted by § 201.63 from intercepting or soliciting consignments at a stockyard after the livestock has been received and while it is being delivered to a consignee. Section 201.63 would be removed by this proposal. This practice is no longer a significant problem to the industry. Any problems which may occur can and should be controlled by the stockyard where the problem arises.

Price Guarantees Not To Be Given. It is proposed to retain § 201.64 in its current form. Market agencies selling on commission are prohibited by this regulation from guaranteeing the price at which consigned livestock will be sold.

This practice is used to solicit consignments which may otherwise be consigned to a competitior's market. It results in unfair competition to other firms, particularly smaller firms, which cannot afford to engage in this practice. When this practice is left unchecked, market agencies tend to compete on the basis of price guarantees rather than on the basis of the selling services offered. The practice may result in discriminatory prices and selling services, and may also be used as a form of commission rebate.

Employment of Salesman on Split Commission. This proposal would remove § 201.65 which prohibits a market agency from employing a salesman on the basis of a split of the commissions received from consignors considered to be "followers" of the particular salesman. The unfair practices that this regulation was originally intended to prohibit are no longer a problem in the industry. Thus, under current marketing conditions, this regulation is unnecessary.

Market Agencies Not To Employ Packers. Paragraph (a) of § 201.66 would be retained in its current form. Market agencies selling on commission are prohibited by this regulation from employing a packer, or any person employed by a packer to purchase livestock, to provide any of the market agency's services. Packers, or persons employed by packers to purchase livestock for slaughter, are actual or potential livestock buyers at such market agencies. As such the market agency selling on commission and the packer or the packer's employed livestock buyer have conflicting interests which are best resolved through the maintenance of an arm's length relationship.

Paying the Expenses of Buyers. This proposal would retain section 203.5 of the Statements of General Policy in its current form. That policy statement sets forth the Administration's position with respect to market agencies selling on commission paying the expenses of buyers attending their sales. Such payments may become a method of unfair competition between similarly engaged market agencies resulting in unnecessary cost burdens on consignors because of increased rates and charges. It may also result in unreasonable discrimination between buyers.

Executive Order

It has been determined that the proposals to amend and remove the regulations relating to the accounting and recordkeeping and trade practices of market agencies, dealers, meat packers, and live poultry dealers and handlers as proposed herein are not "major" rules as defined by section 1(b) of E.O. 12291.

The proposed rules will not have an annual effect on the economy of $100 million or more, will not result in major increases in costs or prices for consumers, individual industries, Government agencies, or geographic regions, and will not 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 export markets. Accordingly, regulatory impact analyses are not required.

Regulatory Flexibility Act

B. H. (Bill) Jones, Administrator, Packers and Stockyards Administration, has determined that these proposals will not have a significant economic impact on a substantial number of small entities.

These proposals would remove several restrictions on the business activities of market agencies and greatly simplify and clarify the trade practice regulations. These regulations simply proscribe certain unfair and deceptive practices which are unlawful under the Packers and Stockyards Act.

Consolidation of the records disposal regulations and policy statement would not impose any new recordkeeping requirements and, in fact, would reduce the retention period for some packer records.

List of Subjects

9 CFR Part 201

Accounting and records, Trade practices—Livestock purchased from consignments, Trade practices—other.

9 CFR Part 203

Paying the expenses of buyers.

(7 U.S.C. 228.)

Done at Washington, D.C. September 17, 1982.

B. H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

PART 203—STATEMENTS OF GENERAL POLICY UNDER THE PACKERS AND STOCKYARDS ACT

§§ 201.46, 201.47, 201.52. 201.54, 201.57-201.60, 201.62, 201.63, 201.65, 201.101, 201.102, 201.107, 201.111 and 203.4 [Removed]

1. It is proposed to remove §§ 201.46, 201.47, 201.52, 201.54, 201.57, 201.58, 201.59, 201.60, 201.62, 201.63, 201.65, 201.101, 201.102, 201.107, 201.111 (9 CFR 201.46, 201.47, 201.52, 201.54, 201.57, 201.58, 201.59, 201.60, 201.62, 201.63, 201.65, 201.101, 201.102, 201.107, and 201.111) of the regulations and § 203.4 (9 CFR 203.4) of the Statements of General Policy.

2. It is proposed to revise §§ 201.43, 201.49, 201.50, 201.53, 201.55, 201.56, 201.61, and 201.66(a). (9 CFR 201.43, 201.49, 201.50, 201.53, 201.55, 201.56, 201.61, and 201.66) of the regulations to read as set forth below.

§ 201.43 Payment and accounting for livestock and live poultry.

(a) *Market agencies to make prompt accounting and transmittal of net proceeds.* Each market agency shall, before the close of the next business day following the sale of any livestock consigned to it for sale, transmit or deliver to the consignor or shipper of the livestock, or the duly authorized agent, in the absence of any knowledge that any other person, or persons, has any interest in the livestock, the net proceeds received from the sale and a true written account of such sale, showing the number, weight, and price of each kind of animal sold, the date of sale, the commission, yardage, and other lawful charges, and such other facts as may be necessary to complete the account and show fully the true nature of the transaction.

(b) *Prompt payment for livestock—terms and conditions.* (1) No packer, market agency, or dealer shall purchase livestock for which payment is made by a draft which is not a check, unless the seller expressly agrees in writing before the transaction that payment may be made by such a draft. (In cases of packers whose average annual purchases exceed $500,000, and market agencies and dealers acting as agents for such packers, see also § 201.200.)

(2)(i) No packer, market agency, or dealer purchasing livestock for cash and not on credit, whether for slaughter or not for slaughter shall mail a check in payment for the livestock unless the check is placed in an envelope with proper first class postage prepaid and properly addressed to the seller or such person as he may direct, in a post office, letter box, or other receptacle regularly used for the deposit of mail for delivery, from which such envelope is scheduled to be collected (*a*) before the close of the next business day following the purchase of livestock and transfer of possession thereof, or (*b*) in the case of a purchase on a "carcass" or "grade and yield" basis, before the close of the first business day following determination of the purchase price.

(ii) No packer, market agency, or dealer purchasing livestock for slaughter, shall mail a check in payment for the livestock unless (*a*) the check is made available for actual delivery and the seller or his duly authorized representative is not present to receive payment, at the point of transfer of possession of such livestock, on or before the close of the next business day following the purchase of the livestock and transfer of possession thereof, or, in the case of a purchase on a "carcass" or "grade and yield" basis, on or before the close of the first business day following determination of the purchase price; or unless (*b*) the seller expressly agrees in writing before the transaction that payment may be made by such mailing of a check.

(3) Any agreement referred to in paragraphs (b) (1) or (2) of this section shall be disclosed in the records of any market agency or dealer selling such livestock, and in the records of the packer, market agency or dealer purchasing such livestock, and retained by such person for such time as is required by any law, or by written notice served on such person by the Administrator, but not less than two calendar years from the date of expiration thereof.

(4) No packer, market agency, or dealer shall, as a condition to its purchase of livestock, impose, demand, compel, or dictate the terms or manner of payment, or attempt to obtain a payment agreement from a seller through any threat or retaliation or other form of intimidation.

(c) *Purchaser to promptly reimburse agents.* Each packer, market agency, or dealer who utilizes or employs an agent to purchase livestock for him, shall, in transactions where such agent uses his own funds to pay for livestock purchased on order, transmit or deliver to such agent the full amount of the purchase price before the close of the next business day following receipt of notification of the payment of such purchase price, unless otherwise expressly agreed between the parties before the purchase of the livestock. Any such agreement shall be disclosed in the records of the principal and in the records of any market agency or dealer acting as such agent.

(d) *Purchasers to pay promptly for live poultry purchases.* Each packer or live poultry dealer or handler shall, before the close of the fifth business day following slaughter of any poultry purchased, transmit or deliver to the seller of such poultry or his duly authorized agent the full amount of the purchase price thereof, unless otherwise expressly agreed between the parties before the purchase of the poultry. Any such agreement shall be disclosed in such purchaser's records and on all accountings or other documents issued by such purchaser relating to the transaction.

§ 201.49 Requirements regarding scale tickets evidencing weighing of livestock and live poultry.

(a) *Livestock.* When livestock is weighed for purpose of purchase or sale, a scale ticket shall be issued which shall show: (1) The name and location of the agency performing the weighing service; (2) the date of the weighing; (3) the name of the buyer and seller or consignor, or a designation by which they may be readily identified; (4) the number of head; (5) kind; (6) actual weight of each draft of livestock; and (7) the name, initials, or number of the person who weighed the livestock, or if required by State law, the signature of the weigher. Scale tickets issued under this section shall be serially numbered and used in numerical sequence. Sufficient copies shall be executed to provide a copy to all parties to the transaction. In instances where the weight values are automatically recorded directly on the account of purchase, account of sale or

other basic record, this record may serve in lieu of a scale ticket. When livestock is purchased on a carcass weight or carcass grade and weight basis, the hot carcass weights shall be accurately recorded on a permanent record, either manually or automatically, to substantiate settlement of each transaction.

(b) *Live poultry.* When live poultry is weighed for purpose of purchase, sale, acquisition, or settlement by a packer or live poultry dealer or handler, a scale ticket shall be issued which shall show: (1) The name of the agency performing the weighing service; (2) the name of the packer or live poultry dealer or handler; (3) the name and address of the grower, purchaser, or seller; (4) the name or initial of the person who weighed the poultry; (5) the location of the scale; (6) the gross weight, tare weight, and net weight; (7) the date and time gross weight and tare weight are determined; (8) the number of poultry weighed; (9) the weather conditions; (10) whether the driver was on or off the truck at the time of weighing; (11) the license number of the truck or the truck number; *Provided,* That when live poultry is weighed on a scale other than a vehicle scale, the scale ticket need not show the information specified in paragraphs (b)(9), (10), and (11) of this section. Scale tickets issued under this paragraph shall be at least in duplicate form and shall be serially numbered and used in numerical sequence. One copy shall be furnished to the grower, purchaser, or seller, and one copy shall be furnished to or retained by the packer or live poultry dealer or handler.

§ 201.50 Records; disposition.

(a) *Records may be disposed of after two years except as otherwise provided.* Except as provided in paragraph (b) of this section, no packer, live poultry dealer or handler, stockyard owner, market agency, or dealer shall, without the consent in writing of the Administrator, destroy or dispose of books, records, documents, or papers which contain, explain, or modify transactions in its business under the Act for a period of two full calendar years: *Provided,* That the following records made or kept by a packer may be disposed of after one year; cutting tests; departmental transfers; buyers' estimates; drive sheets; scale tickets received from others; inventory and products in storage; receiving records; trial balances; departmental overhead or expense recapitulations; bank statements, reconciliations and deposit slips; production or sale tonnage reports (including recapitulations and summaries of routes, branches, plants, etc.) buying or selling pricing instructions and price lists; correspondence, telegrams, teletype communications and memoranda relating to matters other than contracts, agreements, purchase or sales invoices, or claims or credit memoranda. *Provided further,* That microfilm copies of records may be substituted for and retained in lieu of the actual records.

(b) *Retention for longer periods may be required.* The periods specified in paragraph (a) of this section shall be extended if necessary to comply with any Federal, State, or local law, or if the packer, live poultry dealer or handler, stockyard owner, market agency or dealer is notified in writing by the Administrator that specified records should be retained for a longer period. The periods herein after which records may be disposed of have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 (56 Stat. 1078; 5 U.S.C. 139 *et seq.*).

§ 201.53 Persons subject to the Act not to circulate misleading reports about market conditions or prices.

No packer, live poultry dealer or handler, stockyard owner, market agency, or dealer shall knowingly make, issue, or circulate any false or misleading reports, records or representation concerning the market conditions or prices of livestock, meat, live poultry, or dressed poultry.

§ 201.55 Purchases and sales to be made on actual weights.

When livestock is bought or sold on a weight basis, settlement therefor shall be on the basis of the actual weight shown on the scale ticket. If the actual weight used is not obtained on the date and at the place of transfer of possession, this information shall be disclosed with the date and location of the weighing on the accountings, bills, or statements issued. Any adjustment to the actual weights shall be fully and accurately explained on the accountings, bills, or statements issued and records shall be maintained to support such adjustment.

§ 201.56 Market agencies selling on commission; purchases from consignment.

(a) *Livestock to be sold openly at highest available bid.* Every market agency engaged in the business of selling livestock on a commission or agency basis shall sell the livestock consigned to it openly, at the highest available bid, and in such a manner as to best promote the interests of each consignor.

(b) *Purchases from consignment to fill orders.* No market agency engaged in the business of selling and buying livestock on a commission basis shall use livestock consigned to it for sale to fill orders on an agency basis, nor shall it permit its owners, officers, agents, employees, or any firm in which such market agency or its owners, officers, agents, or employees have an ownership or financial interest to use livestock consigned to such market agency to fill orders on an agency basis, without first offering the livestock for sale in an open and competitive manner to other available buyers, and then only at a price higher than the highest available bid on such livestock.

(c) *Market agencies not to speculate on purchases from consignments.* No market agency engaged in selling livestock on a commission basis shall purchase livestock from consignments to such market agency for speculative resale, and no such market agency shall permit its owners, officers, agents, employees, or any firm in which such market agency or its owners, officers, agents, or employees have an ownership or financial interest to purchase livestock from consignments to such market agency for speculative resale. *Provided,* That this paragraph shall not be construed to prohibit a market agency from purchasing livestock for its own account to support the market when necessary to protect the legitimate interest of its consignors.

(d) *Key employees at auction sales; not to purchase livestock out of consignments to fill orders or for speculation.* No market agency engaged in selling livestock at auction shall permit its auctioneers, weighmasters, ringmen, or other employees performing duties of comparable responsibility in connection with the actual conduct of the auction sales, to purchase livestock out of consignments, directly or indirectly, for speculative resale or to fill orders on an agency basis for their own account.

(e) *Purchases from consignment; disclosure required.* When a market agency purchases livestock consigned to it for sale to fill orders for to support the market, or sells consigned livestock to any owner, officer; agent, employee, or any person in whose business such market agency, owner, officer, agent, or employee has an ownership or financial interest, the market agency shall disclose the name of the buyer and the nature of the relationship existing between the market agency and buyer. Such disclosure shall be made at the time of sale and on the account of sale.

§ 201.61 Market agencies selling or purchasing livestock on commission; relationships with dealers.

(a) *Market agencies selling on commission.* No market agency selling consigned livestock shall enter into any agreement, relationship or association with dealers or other buyers which has a tendency to lessen the loyalty of the market agency to its consignors or impair the quality of the market agency's selling services. No market agency selling livestock on commission shall provide clearing services for any independent dealer who purchases livestock from consignments to such market agency.

(b) *Market agencies buying on commission.* No market agency purchasing livestock on commission shall enter into any agreement, relationship, or association with dealers or others which will impair the quality of the buying services furnished to its principals. No market agency purchasing livestock on commission shall, in filling orders, purchase livestock from a dealer whose operations it clears or finances without disclosing the relationship between the market agency and dealer to its principals on the accounting furnished to the principal.

§ 201.66 Market agencies not to employ packers or persons employed to purchase livestock for a packer.

No maker agency shall employ or permit any packer, or any person employed by a packer to buy livestock to perform any duty in connection with the services furnished by such market agency.

[FR Doc.82-26271 Filed 9-23-82; 8:45 am]
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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

Insured Nonmember Banks; Request for Comments

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The FDIC, having concluded that the Banking Act of 1933 (commonly known as "the Glass-Steagall Act") does not prohibit FDIC insured banks which are not members of the Federal Reserve System ("insured nonmember banks") from being affiliated with companies that engage in the securities business or from having bona fide subsidiaries that engage in securities activities, is soliciting comments on (1) whether there is a need for rulemaking to condition, restrict, or prohibit insured nonmember banks from establishing or acquiring subsidiaries that issue, underwrite, sell, or distribute stocks, bonds, debentures, notes, or other securities, (2) whether there is a need for rulemaking in order to restrict the manner in which an insured nonmember bank may deal with a securities affiliate, and (3) what criteria should be taken into account in deciding if a securities subsidiary is in fact a bona fide subsidiary.

DATE: Comments must be received by October 25, 1982.

ADDRESS: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429. Comments may be hand-delivered to Room 6108 between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Pamela E. F. LeCren, Senior Attorney, Legal Division (202-389-4171), Room 4126-E, or Arthur L. Beamon, Counsel, Legal Division (202-389-4171), Room 4037, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: On August 23, 1982 the FDIC adopted a policy statement on the applicability of the Glass-Steagall Act to securities activities of insured nonmember banks (47 FR 38984). That policy statement expressed the opinion of the Board of Directors that under the Glass-Steagall Act (1) insurance nonmember banks may be affiliated with companies that engage in securities activities, and (2) securities activities of bona fide subsidiaries of insured nonmember banks are not prohibited by section 21 of the Glass-Steagall Act (12 U.S.C. 378) which prohibits deposit taking institutions from engaging in the business of issuing, underwriting, selling, or distributing stocks, bonds, debentures, notes or other securities.

The policy statement applies solely to insured nonmember banks. As noted in the policy statement, the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et. seq.*) places certain restrictions on non-banking activities. Insured nonmember banks that are members of a bank holding company system need to take into consideration sections 4(a) and 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843 (a) and (c)) and applicable Federal Reserve Board regulations before entering into securities activities through subsidiaries.

The policy statement also expressed the opinion of the Board of Directors of the FDIC that there may a need to restrict or prohibit certain securities activities of subsidiaries of nonmember banks. As the policy statement noted, "the FDIC * * * recognizes its ongoing responsibility to ensure the safe and sound operation of insured nonmember banks, and depending upon the facts, the potential risks inherent in a bank subsidiary's involvement in certain securities activities." In view of the Board's opinion as articulated in the policy statement and recent challenges to the safety or soundness of securities activities when carried on by bank subsidiaries,[1] the FDIC is soliciting public comment on, among other things, whether or not it is inherently unsafe or unsound for a bank subsidiary to engage in securities activities or whether there is a need to condition or restrict such activities (on a case-by-case basis or by regulation) even though they may not be inherently unsafe or unsound in all instances.

The FDIC is specifically requesting comments that address the following:

(1) Whether it is inherently unsafe or unsound for insured nonmember banks to establish or acquire subsidiaries that will engage in securities activities or for insured nonmember banks to be affiliated with a business engaged in securities activities;

(2) Whether certain securities activities when engaged in by subsidiaries of insured nonmember banks pose safety and soundness problems whereas others do not;

(3) Whether, and in what circumstances, securities activities of insured nonmember banks should be considered unsafe or unsound;

(4) Whether securities activities of subsidiaries present conflicts of interest that warrant restricting the manner in which the bank may deal with its securities subsidiary (or its securities affiliate), or the manner in which common officers or employees may function, etc.;[2]

[1] Two petitions have been filed with the FDIC challenging as unsafe or unsound the proposed entry of insured nonmember banks into the securities area through subsidiaries. One petition specifically requested that the FDIC adopt a rule prohibiting insured nonmember banks from issuing, underwriting, selling, or distributing stocks, bonds, or other securities or engaging in brokerage activities through subsidiaries or affiliates. The FDIC is issuing this advance notice of proposed rulemaking in part so that it may more ably assess the issues raised in the rulemaking request.

[2] The FDIC has in the past imposed conditions in connection with deposit insurance applications where, for example, a trust company owned by a securities dealer wished to obtain FDIC deposit insurance. Conditions that have been imposed due to possible conflicts of interest were (1) that the bank not enter into any securities transactions involving the affiliated securities dealer, (2) that no common director, officer, or employee while acting as a director, officer, or employee of the bank or while on the premises of the bank shall enter into

(5) Should securities activities be limited to subsidiaries of banks of a certain asset size, banks with a certain composite rating, etc. (See "Uniform Financial Institutions Rating system", FDIC Press Release PR 126, 1979; FDIC (P–H) p. 5079 for a definition of "composite rating");

(6) Should nonmember banks obtain FDIC's prior approval before establishing or acquiring subsidiaries that will engage in securities activities in all cases, in some cases, or not at all;

(7) Do the potential benefits, if any that would be available to insured nonmenber banks as a result of competing in the securities area through subsidiaries offset potential disadvantages to the banks; and

(8) Are there any perceived public harms in insured nonmenber banks embarking on such activities.

The FDIC is also requesting comment on how to determine if a securities subsidiary is in fact a bona fide subsidiary and not the alter ego of the parent insured nonmember bank. The policy statement issued by the FDIC indicates that, in the opinion of the Board of Directors of the FDIC, Section 21 of Glass-Steagall does not reach the securities activities of a bona fide subsidiary of an insured nonmember bank. If the subsidiary is, however, merely the alter ego of the parent bank, the bank may be deemed to be engaged in securities activities in violation of Section 21 of Glass-Steagall. The FDIC is therefore soliciting comments on whether it would be appropriate to define the term "bona fide" by listing a number of criteria. Would any of the following be appropriately included if criteria were established:

(1) Whether the bank and the subsidiary have the same or similar names so that the public might be confused as to the separate identity of the two;

(2) Whether the subsidiary maintains separate accounting and other records or conducts separate board meetings;

(3) Whether the subsidiary operates out of the same facilities as the parent bank;

(4) Whether the subsidiary has the same directors, officers, and employees as the parent bank and if there are separate employment contracts; and

(5) Whether the subsidiary is inadequately capitalized.

The public is also invited to address the following general issues:

What additional criteria, if any, should be considered? Is it appropriate at all to try to define "bona fide"? If a definition is developed and criteria used, should certain criteria be given more weight than others in making the assessment?

Comments addressing these issues and any other aspects of the general subject of permitting subsidiaries of insured nonmenber banks to engage in securities activities will be welcomed.

List of Subjects in 12 CFR Part 337

Insured nonmember banks, Glass-Steagall Act, Subsidiaries, Securities activities.

By order of the Board of Directors.

Dated: September 20, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

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BILLING CODE 6714–01–M

any securities transaction with any customer of the bank, and (3) that the bank make no loans to any person for the purpose of acquiring securities from the affiliated securities dealer so long as any officer, director, or employee of the bank is a registered representative of the dealer.

See also, for example, Federal Reserve Board Regulation Y (12 CFR Part 225) which contains restrictions that have been imposed on bank holding companies that act as advisors to closed-end investment companies. Those, or similar restrictions which address conflicts of interest may or may not be appropriate in the context under consideration here.

CIVIL AERONAUTICS BOARD

14 CFR Part 399

[Policy Statements Docket 40823; PSDR–78A]

Statements of General Policy; Extension of Comment Period

AGENCY: Civil Aeronautics Board.

ACTION: Extension of comment period.

SUMMARY: This action extends until November 29, 1982 the filing date for comments in advance notice of proposed rulemaking proceeding that considers alternatives for changing the duration of experimental certificates awarded to U.S. air carriers to provide foreign air transportation in limited designation international market.

DATES:

Comments by November 29, 1982.

Reply comments by December 14, 1982.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 40823, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Donald H. Horn, Associate General Counsel, Office of the General Counsel, 202–673–5205, or Joseph A. Brooks, Office of the General Counsel, 202–673–5442 or Jeffrey B. Gaynes, Legal Division, Bureau of International Aviation, 202–673–5035; Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: By Advance Notice of Proposed Rulemaking, PSDR–78, 47 FR 32442 July 27, 1982, the Board invited comment on its policy with respect to certificates in limited-designation international markets. Specifically, the Board asked for comment on alternatives that would change the duration of experimental certificates awarded to U.S. air carriers that provide service in these markets. The comment deadline was September 27, 1982.

Pan American World Airways (Pan Am) has requested an extension of this deadline. Pan Am states that recent Congressional action on Section 531 of the Airport and Airway Improvement Act of 1982, and Title V of the Tax Equity and Fiscal Responsibility Act of 1982 greatly affect the issues presented by the current rulemaking. Citing the possibility that the Board will shortly issue an order discussing the impact of the new legislation, Pan Am suggests that the comment date on this rulemaking be deferred until an order is issued.

After consideration of the foregoing, there appears to be good cause to grant a reasonable extension of time. A 60-day extension should suffice at this point for interpretation of the new legislation.

Accordingly, under authority delegated in 14 CFR 385.20(d), the time for filing comments is extended to November 29, 1982 and the time for reply comments is extended to December 14, 1982.

List of Subjects in 14 CFR Part 399

Administrative practice and procedure, Advertising, Air carriers, Antitrust, Archives and records, Consumer protection, Freight forwarders, Grant program-transportation, Hawaii, Motor carriers, Puerto Rico, Railroads, Reporting requirements, Travel agents, Virgin Islands.

Regulatory Flexibility Act

The statement required by the Regulatory Flexibility Act (Pub. L. 96–354) about the effect of the proposed rule on small business remains the same as set forth in PSDR–78.

(Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324)

Dated: September 21, 1982.

Richard B. Dyson,

Associate General Counsel, Rules and Legislation.

[FR Doc. 82–26355 Filed 9–23–82; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 167

[Docket No. 78N–0364]

Virgin Olive Oil, Refined Olive Oil, and Refined Olive-Residue Oil; Termination of Consideration of Codex Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; termination of consideration.

SUMMARY: The Food and Drug Administration (FDA) is terminating consideration of the establishment of a U.S. standard for virgin olive oil, refined olive oil, and refined olive-residue oil based on the "Recommended International Standard for Olive Oil, Virgin and Refined, and Refined Olive-Residue Oil" (Codex standard) because there is neither sufficient interest nor need to warrant proposing a U.S. standard for these foods.

FOR FURTHER INFORMATION CONTACT: Eugene T. McGarrahan, Bureau of Foods (HFF–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1155.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 23, 1979 (44 FR 10742), FDA published an advance notice of proposed rulemaking which offered interested persons an opportunity to review the Codex standard and to comment on the desirability and need for a U.S. standard for virgin olive oil, refined olive oil, and refined olive-residue oil. The Codex standard was submitted to the United States for consideration for acceptance by the Codex Alimentarius Commission whose worldwide food standards program is sponsored jointly by the Food and Agriculture Organization (FAO) and the World Health Organization (WHO).

Sixty-five comments were received in response to the advance notice of proposed rulemaking. The majority of the comments favored establishing a U.S. standard because they wanted the sale of lower quality "refined olive-residue oil" as higher priced pure or refined olive oil to be curtailed. A number of comments opposing these standards objected to the requirement that the name for olive oil obtained by solvent extraction would be "refined olive-residue oil." The comments pointed out that solvent extraction is a commonly used method of obtaining high quality oil from oilseeds such as safflower and cotton seeds, but that the names of these oils are not required to include the word "residue" as the name of solvent-extracted olive oil would be required to do.

FDA acknowledges that solvent extraction is a standard procedure for removing oil from substances having low oil contents, such as safflower and cotton seeds. Olives, however, have a high oil content and the oil is easily removed by a mechanical or physical process, such as pressing. Solvent extraction of oil from olives is used to remove the residual oil from the pomace and pits remaining from pressing operations. Solvent-extracted olive oil is lower in quality than pressed olive oils due to the higher free fatty acid content caused by breakdown to triglycerides by enzymes liberated from the olive material during the pressing operations. As the free fatty acid content increases, the flavor and keeping quality of the oil deteriorate and the oil must undergo several refining processes to make it suitable for human consumption. For these reasons, the agency believes that it is reasonable to identify a solvent extracted olive oil as a "residue oil."

Many of the opposing comments also expressed the opinion that the "refined olive-residue oil" referred to by the Codex standard is actually "grade B glycerol olive oil," a very low quality oil that should not be permitted for sale in the United States.

The agency advises that refined olive-residue oil and grade B glycerol olive oil are not the same food. Grade B glycerol olive oil is an esterified oil produced by reacting very low quality olive-residue oil (high in free fatty acids), or alternatively, distilled fatty acids, with glycerol to form triglycerides. The result, after refining, is an edible oil, but, because it is retrieved from low quality material, it is not considered saleable in most countries of the world including the United States.

Several comments indicated that there is some confusion as to the proper labeling and nomenclature for various types of olive oils.

The name "virgin olive oil" may be used only for the oil resulting from the first pressing of the olives and which is suitable for human consumption without further processing. The name "refined olive oil" refers to the oil obtained from subsequent pressings and which is made suitable for human consumption by refining processes which neutralize the acidity and remove particulate matter. Oil extracted from olive pomace and pits by chemical means and refined to make it edible must be labeled either "refined olive-residue oil" or "refined extracted olive-residue oil." Blends of virgin olive oil and refined olive oil may be labeled as "olive oil," but blends of olive oil with other edible fats or oils must be labeled in accordance with 21 CFR 102.37.

In view of the fact that no data were submitted to support the need for this standard, FDA has concluded that there is not sufficient need to warrant proposing a U.S. standard at this time for virgin olive oil, refined olive-oil, and refined olive-residue oil under the authority of section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

Therefore, under the procedures in 21 CFR 130.6, notice is given that the Commissioner of Food and Drugs has terminated consideration of developing a U.S. standard for virgin olive oil, refined olive oil, and refined olive-residue oil based on the Codex standard. This action is without prejudice to further consideration of the development of a U.S. standard for virgin olive oil, refined olive oil, and refined olive-residue oil upon appropriate justification.

FDA will inform the Codex Alimentarius Commission that an imported food which complies with the requirements of the Codex standard may move freely in interstate commerce in this country, providing it complies with applicable U.S. laws and regulations.

Dated: September 16, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–26179 Filed 9–23–82; 8:45 am]

BILLING CODE 4160–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL 2200-7; FL-003]

Approval and Promulgation of Implementation Plans; Florida: Proposal for TSP Nonattainment Areas

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Florida Department of Environmental Regulation (DER) for the Hillsborough County (Tampa) and Duval County (Jacksonville) particulate nonattainment areas. This action is based on the State's submittal of a control strategy and regulations as required by Part D of Title I of the Clean Air Act (CAA) of 1977. An improvement in the air quality in Hillsborough and Duval Counties is expected from this action. The public is invited to submit written comments.

DATE: To be considered, comments must be received on or before October 25, 1982.

ADDRESSES: Written comments should be addressed to Barry Gilbert of EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the materials submitted by the Florida DER may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Bureau of Air Quality Mgmt., Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: Barry Gilbert of EPA Region IV's Air Management Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365, telephone 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: In the March 3, 1978 **Federal Register** (43 FR 8962 at 8980), a number of areas within the State of Florida were designated as not attaining certain national ambient air quality standards (NAAQS). Hillsborough and Duval Counties were designated nonattainment for the secondary ambient standard for total suspended particulates (TSP). On September 11, 1978 (FR 40412), the size of these nonattainment areas were reduced. The Florida DER has developed particulate regulations requiring reasonably available control technology (RACT) in the violating areas so that the TSP secondary standard can be attained and maintained.

General Discussion

The implementation plan revision developed for these areas by the Florida DER under Part D of Title I of the CAA was submitted for EPA's approval on Feburary 27, 1981. Action on this submittal was delayed until control strategies were submitted by Florida. The revision has now been reviewed by EPA in light of the CAA of 1977, EPA regulations, and additional guidance. Section 172(b) of the Clean Air Act contains the minimum requirements for approval of Part D plans for designated nonattainment areas.

The two areas in Florida designated as nonattainment for total suspended particulate are defined as follows: The portion of downtown Jacksonville area in Duval County located just north and west of the St. Johns River and east of I-95 and just south of Trout River, and the portion of Hillsborough County that falls within the area of the circle having a centerpoint at the intersection of U.S. 41 South and State Road 60 and a radius of 12 kilometers.

The application of RACT to existing stationary sources is a required part of the particulate nonattainment corrective portion of the State Implementation Plan. Agency personnel investigated the major source categories that represent the type of sources that are located in the two Florida nonattainment areas to assist in determining specific emission limitations. These categories include (1) phosphate process operations, (2) Portland cement plants, (3) electric arc furnaces, (4) sweat or pot furnaces, and (5) materials handling, sizing, screening, crushing, and grinding operations.

The Florida Environmental Regulation Commission adopted these regulatory and non-regulatory SIP revisions following the required public hearings and participation on January 21, 1981. The control strategies, as approved and adopted for the local program agencies (the Duval County Bio-Enviromental Service Division and the Hillsborough County Environmental Protection Commission) were submitted to EPA on March 16 and April 20, 1982, respectively. In preparing the plan, both agencies prepared an extensive inventory of air pollution sources in and impacting the nonattainment area. Using this data base, the primary source categories were modelled following EPA guidelines to determine their respective contribution to the ambient air concentrations. The agencies then evaluated this information and proposed an attainment plan which, by applying RACT to traditional point and industrial process fugitive sources, would result in attainment of the TSP secondary standard by July 31, 1986.

The attainment plan for the secondary standard calls for a reduction in ambient TSP concentrations by the implementation of RACT control measures on industrial point and process fugitive emission sources, primarily in the form of more stringent mass and visible emission limits. The regulations also require certain operation and maintenance activities. Malfunctions of process or control equipment are specifically defined, along with procedures to be followed to minimize emissions when malfunctions occur. Reporting of malfunctions is required.

In reference to FAC Section 17-2.13(3)(g)-Electric Arc Furnaces, DER has placed fugitive visible emission limits of 20% opacity for charging and 40% opacity for tapping operations, to be determined by Test Reference Method 9. Where processes and operations are long-time or continuous, Method 9 would be appropriate. In the case of electric arc furnace charging and tapping emissions, a more appropriate time averaging period would be three minutes, consisting of twelve readings taken at fifteen second intervals. Florida DER has agreed to consider the issue of modifying Method 9 for short-term or intermittent processes which discharge emissions for a shorter time period. For this reason, EPA has recommended to Florida DER that they consider the need to modify and allow visible emission determinations for intermittent processes to be based on time periods shorter than six (6) minutes.

Florida DER has certified in writing to EPA that all sources of air pollution subject to this proposed action, are in fact, in compliance with the stipulated compliance schedules where add-on equipment was required. Any request for redetermination of RACT rules or regulations by an owner or operator requesting such shall be submitted to EPA for approval as a SIP revision.

Since submittal of the SIP revision, Florida Administrative Code (FAC) 17-2 was subsequently reformatted, a revision approved by EPA in the **Federal Register** on March 30, 1982 (47 FR 13336). It should be noted that the RACT rule will be contained in FAC Rules 17-2.400 and 17-2.600.

As required in Section 172(b) of the CAA, the plan also requires preconstruction review of proposed new

or modified major sources before the issuance of a permit. Through emissions offsets and the application of Lowest Achievable Emission Rate (LAER), the plan provides for reasonable further progress toward attainment of the standard as new sources construct in the area. The plan also allows growth and expansion of new sources or modification to take place in the nonattainment areas without jeopardizing progress towards attainment.

The revision submitted by Florida satisfies the requirements of Section 172(b) of the CAA.

Action. Based on the foregoing, EPA is proposing to approve the SIP under Part D of Title I of the CAA as it relates to the attainment of the secondary TSP standards in Hillsborough and Duval Counties, Florida.

As previously stated, written comments must be received on or before October 25, 1982. A thirty-day comment period is being used because the SIP submission and the issues involved are not so complex as to warrant a longer comment period. At the close of the comment period, EPA will review all comments and publish a notice of final rulemaking.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110 and 172, Clean Air Act, as amended, (42 U.S.C. 7410 and 7502)).

Dated: August 19, 1982.

John A. Little,

Acting Regional Administrator.

[FR Doc. 82-26345 Filed 9-23-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-3-FRL 2205-8]

Commonwealth of Pennsylvania Attainment Status Designations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Commonwealth of Pennsylvania has recommended that the sulfur dioxide (SO_2) air quality attainment designation for certain areas in Northumberland and Snyder Counties be revised from nonattainment to "Cannot be Classified". EPA proposes to approve this change as submitted by Pennsylvania. The purpose of this notice is to solicit public comment on the proposed action.

DATE: Comments must be submitted on or before October 25, 1982.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs and Energy Branch, Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106, ATTN: Patricia Sheridan (3AW12)

Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120, ATTN: Gary Triplett

All comments on the proposed revision submitted on or before October 25, 1982 will be considered and should be submitted to Mr. Glenn Hanson at the EPA Region III address stated above.

FOR FURTHER INFORMATION CONTACT: Laurence J. Budney at the Region III address stated above or call 215/597-2842.

SUPPLEMENTARY INFORMATION:

Background

Section 107(d)(1) of the Clean Air Act (Act) requires the States to submit to the Administrator a list identifying all air quality control areas, or portions thereof, that have not attained the National Ambient Air Quality Standards. The Act further requires that the Administrator promulgate this list, with such modifications as he deems necessary, as required by Section 107(d)(2) of the Act. On March 3, 1978, based on dispersion model estimates, the administrator promulgated nonattainment designations for certain areas in Northumberland and Snyder Counties in Pennsylvania (See 43 FR 8962). The Act also provides that a State, from time to time, may review and revise its designations list and submit these revisions to the Administrator for promulgation (Section 107(d)(5) of the Act). On June 4, 1982, Pennsylvania recommended to EPA that the SO_2 air quality nonattainment designations for the areas in Northumberland and Snyder Counties be changed to "Cannot be Classified". That recommendation is based upon new information regarding the uncertainty of dispersion modeling in those areas and two years of SO_2 ambient air quality data showing attainment of the NAAQS for SO_2. The recommendation includes a commitment by the major SO_2 source in that area to conduct extensive ambient monitoring to help determine the true attainment status of the area.

Conclusion

EPA is proposing to approve the SO_2 redesignations as follows:

Northumberland County—Reclassify Lower Augusta and Point Townships from "Does Not Meet Primary Standards" to "Cannot be Classified".

Northumberland County—Reclassify Little Mahanoy, Rockefeller and Shamokin Townships from "Does Not Meet Secondary Standards" to "Cannot be Classified".

Snyder County—Reclassify Shamokin Dam from "Does Not Meet Primary Standard" to "Cannot be Classified".

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. Section 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.)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sections 107(d), 301(a) of the Clean Air Act as amended (42 U.S.C. 7407(d), 7501(2), 7601(a))

Dated: August 25, 1982.

Peter N. Bibko,

Regional Administrator

[FR Doc. 82-26344 Filed 9-23-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82-357; RM-4103]

FM Broadcast Station in Terrell Hills, Texas; Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; Extension of reply comment period.

SUMMARY: Action taken herein extends the time for filing reply comments in BC Docket No. 82–357 (RM–4103) concerning a proposal to substitute FM Channel 294 for Channel 292A at Terrell Hills, Texas, and to modify the license to specify operation on the Class C channel. Petitioner states that the additional time is needed to formulate a proper response.

DATE: Reply comments must be filed on or before October 1, 1982.

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

FOR FURTHER INFORMATION CONTACT:
D. David Weston, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Order Extending Time for Filing Reply Comments

Adopted: September 15, 1982.
Released: September 17, 1982.

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations, (Terrell Hills, Texas).

1. On June 28, 1982, the Commission adopted a Notice of Proposed Rule Making, 47 FR 31016, published July 16, 1982, in the above-captioned proceeding. Comments have been filed and reply comments were due August 31, 1982.

2. We now have before us for consideration a request for extension of time for filing reply comments, filed on September 13, 1982, by S I T Broadcasting Corporation, petitioner in the above-referenced rule making proceeding. Petitioner requests an extension to and including October 1, 1982. Petitioner states that as a result of the extraordinary circumstances set forth in the comments and the effect thereof upon petitioner's proposal to modify the existing license of its station (KESI(FM)), it will need additional time to prepare and file its reply comments.

3. Section 1.46(b) of the Commission's rules states that extension requests for filing reply comments must be filed seven days in advance of the deadline. Although this request is extremely late and we do not generally act favorably on extension requests if filed after the deadline, the Commission is of the view that under the circumstances recited, an extension of time is warranted. It appears that no other party to the proceeding would be predjudiced by the grant of the instant request and we are desirous of knowing S I T's position with respect to the comments in order to develop a sound comprehensive record on which to base a decision herein.

4. Accordingly, it is ordered, that the time for filing reply comments in BC Docket No. 82–357 (RM–4103), is extended to and including October 1, 1982.

5. This action is taken pursuant to authority contained in section 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's rules.

Federal Communications Commission.

Martin Blumenthal,
Assistant Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82–26349 Filed 9–23–82; 8:45 am]
BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1300, 1306, 1307, 1309 and 1310

[Ex Parte No. 435]

Modify Rules Governing Tariff Amendments

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to adopt a policy to allow (1) piecemeal amendments to items and pages of tariffs and schedules in lieu of requiring the reissue of entire items or pages; (2) an increase in the number of supplements and supplemental pages authorized; and (3) carriers and agents to transmit tariffs or schedules to subscribers up to 5 days after transmitting them to the Commission, unless the subscriber has requested concurrent transmission. These actions are necessary due to the escalation of carriers' independent action proposals which have necessitated a dramatic increase in the number of amendments to tariffs and schedules. This will allow carriers and agents to publish proposals quickly in an efficient manner and will save countless pages of supplemental matter.

DATE: Comments are due November 23, 1982.

ADDRESS: Send an original and, if possible, 15 copies of comments to: Interstate Commerce Commission, Ex Parte No. 435, Room 5340, Washington, D.C. 20423.

The decision with specific text of the amendments proposed can be obtained by contacting: Office of the Secretary, Room 2215, Interstate Commerce Commission, 12th and Constitution Ave., NW., Washington, D.C. 20423 (202) 275–7428.

FOR FURTHER INFORMATION CONTACT:
William P. Geisenkotter (202) 275–7739.

SUPPLEMENTARY INFORMATION: The number of tariffs or schedules filed, and amendments thereto, has increased dramatically over the past two years. The increase was the combined result of (1) the "Staggers Rail Act of 1980", enacted October 14, 1980; (2) the "Motor Carrier Act of 1980", enacted July 1, 1980; (3) the depressed economy; and (4) the Commission's Ex Parte No. 297 (Sub-No. 5), *Motor Carrier Rate Bureaus—Implementation of PL 96–296,* proceeding.

All of the above force or stress increased competition among carriers and independent rate actions by individual carriers, as opposed to collective proposals.

Competition, particularly among motor carriers, has been fierce, and the resulting increase in the number of publications has been overwhelming and very expensive.

Our rules governing the method of publication of amendments are restrictive and have resulted in the filing of tens of thousand of pages that would have been unnecessary under less restrictive regulatory requirements.

These rules were designed to avoid the over supplementation of tariffs, to keep tariff amendments clear and simple, and to transmit quickly to subscribers. All were designed to aid the tariff user. However, due to the volume increase, they appear to have become a burden to the carriers and agents, both in expenses and delays in publication.

Also, since the number of special tariff authority applications increases in proportion to the number of tariff pages filed, the proposal, if adopted, could reduce the number of applications filed.

The time has come for this Commission to reconsider these rules and its policy to determine if the burdens can be lifted without adversely affecting the public in an unreasonable manner. The following is a brief explanation of the changes we are proposing.

Tariffs and schedules are subject to limitations on the number of effective pages and supplements they may contain. We propose to revise §§ 1300.9(e)(1), 1307.5(u) and 1310.9(d)(2) to lessen the limitation to allow 8 effective supplements, each unlimited to the number of pages, but collectively subject to a maximum of 70 percent of the number of pages in the original tariff. Further, we are proposing in § 1307.5(u)(2) to authorize motor

contract carriers to publish schedules without supplemental page limitation provided the schedules are reissued at the end of two years. Also, we are proposing to change the one-year reissue requirement to two years for carriers now authorized to file these kinds of tariffs under the terms of § 1300.9(f) and 1310.9(d)(3).

We realize this will increase the size of the amended tariff and create more pages for review by the user. But carriers often will not be required to bring forward unchanged matter and negate the reissuance of tariffs or schedules prematurely. This would result in substantial savings for carriers and agents and should not overburden tariff users.

When a tariff or schedule, in bound form, is amended now, our rules require that an item be canceled completely by a new item, and that the new item bring forward all matter in the old item, even the matter not being changed. The same practice is true when a page of a tariff or schedule in loose-leaf form is amended, since the amended page is required to be specifically canceled and reprinted, as amended.

While these rules tend to assure that the rate searching process is not overly complicated, compliance therewith is costing the carriers a substantial amount of money. Therefore, we are proposing in §§ 1300.9(a)(1), 1307.5(w)(2) and (3), and 1310.10(c)(6) and (7) to authorize partial amendments to bound tariffs and allow supplements to partially amend loose-leaf pages in §§ 1300.9(e)(14), 1307.31(f)(9) and 1310.10(d)(19). This will permit the filing of relatively small supplements which would expedite publication and reduce costs for compilation, printing and mailing.

Motor common carriers of property are authorized to publish blanket supplements (a common supplement to five or more tariffs). Since the railroad agents occasionally have a need for this authority, we are extending the authority for their use in proposed § 1300.9(o).

In Docket No. 35613, *Regulations—Transmission of Tariffs and Schedules*, 349 I.C.C. 119, decided January 30, 1975, the Commission adopted regulations for the transmission of tariffs. The primary rule required that publications be transmitted to subscribers not later than the time the copies are transmitted to the Commission.

The rules were adopted to cure abuses brought to light by shipper complaints. The rules cause about a seven day delay in mailing publications and increase both handling and postage costs of the carriers.

It is our understanding that more and more carriers are publishing their own individual tariffs due to the delay, since the rate bureaus have huge mailing lists. If the rate bureaus were allowed to mail 5 days later, their costs would come down and less publications would be filed due to carriers remaining in rate bureau tariffs. This would create additional savings.

We are aware that the Commission stated in Docket No. 35613 that immediate transmission takes precedence over costs. We still agree with this general position but believe exceptions must be recognized since the economic and regulatory climate is different today than in 1975.

Therefore, we propose to amend §§ 1300.30, 1306.17, 1307.14, 1309.5 and 1310.31 to provide that the present reqirement for immediate mailing to a subscriber will only apply upon written request. The rules would authorize mailing to all other subscribers up to 5 days later. We believe this would benefit the carriers and still protect subscribers who need and desire the tariffs immediately.

Certain of the proposals would result in an additional burden on tariff users by introducing further complexity to tariffs. However, the changes we are proposing should allow carriers to react more promptly to the demands of the shipping public at reduced tariff publication costs. We specifically invite interested parties to address this issue.

Under the Regulatory Flexibility Act of 1980, we must consider whether this proceeding will have a significant economic impact on a substantial number of small entities. We do not believe that this action will significantly affect a substantial number of small entities.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

List of Subjects

49 CFR Part 1300

Freight, Railroads, Maritime carriers, Pipelines.

49 CFR Part 1306

Buses, Freight, Motor carriers.

49 CFR Part 1307

Freight, Motor carriers, Moving of household goods.

49 CFR Part 1309

Freight, Freight forwarders, Motor carriers, Moving of household goods.

49 CFR Part 1310

Freight, Maritime carriers, Motor carriers, Moving of household goods.

(Sec. 10762 of the Interstate Commerce Act, 49 U.S.C. 10762, and under Sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553)

Decided: September 8, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Sterrett concurred with a separate expression.

Agatha L. Mergenovich,

Secretary.

COMMISSIONER STERRETT, concurring:

In an environment as competitive as the motor carrier industry, carriers should have as much interest in tariff simplicity as their shippers. Easy-to-understand tariffs are a marketing tool, and are being recognized as a valuable one by many in the industry. I am not convinced that our intervention as an arbiter or monitor of what is "reasonable" tariff form is necessary or appropriate, nor do I believe that we can perform this function better than the industry can.

I believe this proposal represents an important first step in a reassessment of all existing tariff circular rules. I encourage parties to suggest other tariff publishing rules that warrant reexamination.

[FR Doc. 82-26314 Filed 9-23-82; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 47, No. 186
Friday, September 24, 1982

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

Agricultural Marketing Service

Advisory Committee on Instrument Standards for Cotton; Establishment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of intent to establish advisory committee.

SUMMARY: This notice announces the intent of the Secretary of Agriculture to establish an advisory committee to provide the Department with advice on the technical and scientific aspects of measuring cotton fiber quality with instruments. The members of the committee will be drawn from all segments of the cotton industry directly affected by the use of instruments to classify cotton. Interested persons and organizations are invited to submit comments on the establishment of this committee.

EFFECTIVE DATE: October 12, 1982.

ADDRESS: Mail written comments to: Director, Cotton Division, Agricultural Marketing Service, Room 302, Cotton Annex, U.S. Department of Agriculture, Washington, DC 20250; (202) 447–3193.

FOR FURTHER INFORMATION CONTACT: Harvin R. Smith, Chief, Standards and Testing Branch, Cotton Division, Agricultural Marketing Service, Washington, DC 20250; (202) 447–2167.

SUPPLEMENTARY INFORMATION: Under the United States Cotton Standards Act (7 U.S.C. 56–58) the Secretary of Agriculture is responsible for providing cotton inspection services and official standards for the classification of cotton. In recent years instruments have been developed to replace human judgment in cotton classification and to provide additional measures of cotton quality.

The purpose of the Advisory Committee on Instrument Standards for Cotton is to advise the Secretary on the technical and scientific aspects of measuring cotton fiber quality with instruments, and make recommendations with respect to the development and application of appropriate standards, calibration, and measurement procedures. The Committee will help reconcile different interpretations of test results and scientific data between industry and the Department, and secure balanced advice from the cotton industry. The Committee's involvement will tend to insure that the program will operate in a manner which provides an effective service which can be relied upon by the industry.

The Committee shall be appointed by the Secretary and shall consist of members representing all segments of the cotton industry directly affected by the use of instruments to classify cotton. To the extent practicable, the Committee will have an ethnic, racial and sexual balance.

Advance notice of all meetings of the Advisory Committee will be published in the **Federal Register** at least 15 days prior to a scheduled meeting.

Interested persons and organizations are invited to submit comments on the establishment of this Committee.

Dated: September 21, 1982.

John Franke, Jr.,

Deputy Assistant Secretary for Administration.

[FR Doc. 82-26364 Filed 9-23-82; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

1982–83 Milk Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determinations for 1982–83 milk price support program.

SUMMARY: This Notice of Determination sets forth the support price for milk and the prices Commodity Credit Corporation (CCC) will pay for butter, cheese and nonfat dry milk (NDM) under the Milk Price Support Program for the period October 1, 1982 through September 30, 1983. The notice also sets forth the determination that beginning December 1, 1982, 50 cents per hundredweight shall be deducted from the proceeds of sale of all milk marketed commercially by producers to offset a portion of the cost of the milk price support program. Such deductions are to be collected and remitted to the CCC in accordance with regulations issued by the U.S. Department of Agriculture (USDA). These determinations are made in accordance with Section 201 of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: October 1, 1982.

FOR FURTHER INFORMATION CONTACT: Charlee N. Shaw, Dairy/Sweeteners Group, Analysis Division, ASCS–USDA, 3741 South Building, P.O. Box 2415, Washington, D.C. 20013; (202–447–7601). The Final Regulatory Impact Analysis describing the action taken in this rule and its impact is available from Charles N. Shaw.

SUPPLEMENTARY INFORMATION: This Notice of Determination has been reviewed under USDA procedures established to implement Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified as "major" since the determinations with respect to the level of support for milk and deductions from proceeds of milk sold by producers during the 1983 fisal year will have an effect on the economy exceeding $100 million.

The title and number of the federal assistance program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this Notice of Determination since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

The Omnibus Budget Reconciliation Act of 1982, approved September 8, 1982, amends the dairy price support provisions contained in Section 201 of the Agricultural Act of 1949. Since the level of support becomes effective October 1, 1982, it has been determined that this notice should be issued without prior opportunity for public comment in order that producers, handlers, and others might be informed of these determinations as soon as possible.

Section 201(c) of the Agricultural Act of 1949, as amended (the "1949 Act"), provides that the price of milk shall be supported through purchases, at a level not in excess of 90 percent nor less than

75 percent of parity as the Secretary determines necessary in order to assure an adequate supply of pure and wholesome milk to meet current needs, reflect changes in the cost of production, and assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs. Section 201(d) of the 1949 Act further provides that for the period beginning October 1, 1982, and ending September 30, 1984, the price of milk shall be supported at not less than $13.10 per hundredweight for milk containing 3.67 percent milkfat. In addition, if the Secretary estimates that the net price support purchases of milk or the products of milk will equal or exceed 5 billion pounds milk equivalent during fiscal year 1983, the Secretary may provide for a deduction of 50 cents per hundredweight from the proceeds of sale of all milk marketed commercially by producers to be remitted to the CCC to offset a portion of the cost of the milk price support program. Such deductions shall be collected and remitted to the CCC. If at any time during a fiscal year the Secretary should estimate that such net price support purchases during that fiscal year will be less than 5 billion pounds milk equivalent, the deduction shall not be applicable for the remainder of such fiscal year.

The price of milk is supported through purchases by CCC of butter, cheese and nonfat dry milk (NDM) at prices calculated to enable plant operators to pay dairy farmers a price equal to the support price. The effectiveness of the program depends on competition by manufacturers for available supplies of milk so that the average price received by farmers will equal the announced support price. At times of significant price support purchases, the purchase prices for these products tend to become the floor for the market prices of such products. Since most of the fluid milk prices are based on prices paid for manufacturing milk, the price support program undergirds all milk and dairy products prices.

Summary of the Final Regulatory Impact Analysis

The Final Regulatory Impact Analysis for the 1982–83 milk price support program analyzes the support program for manufacturing milk at the statutory minimum, $13.10 per hundredweight for milk containing 3.67 percent milkfat. This price is equivalent to $12.80 per hundredweight for milk containing 3.5 percent milkfat. With the support price at the minimum ($13.10 per hundredweight) for the 1982–83 marketing year, milk production is projected to be about 1.4 billion pounds higher than in 1981–82. However, consumption is expected to increase by 2 billion pounds, and CCC price support purchases are expected to decrease by 1.1 billion pounds (milk equivalent), thereby resulting in somewhat lower costs to the government.

A level of support of $13.10 per hundredweight is still expected to result in continued over-production of milk, large removals of dairy products by the CCC, and excessive costs to the government. A higher support price would only compound the problem by further increasing milk production. This would lead to even greater market removals by CCC and increased government costs.

Based on $13.10 per hundredweight for the 1982–83 marketing year, CCC removals of dairy products are projected to be 12.6 billion pounds, milk equivalent, compared with a projected 13.7 billion pounds in 1981–82, and 12.7 billion pounds in 1980–81.

In addition, the impact analysis for the 1982–83 milk price support program analyzes supply and use conditions which would result from the implementation of the 50-cent deduction on December 1, 1982. Even with the implementation of such 50-cent deduction, milk production in 1982–83 is likely to increase from 1981–82 levels—although the increase would likely be less than 0.5 percent. Accordingly, it is estimated that net purchases will exceed 5 billion pounds and will total 11.8 billion pounds.

Based on commercial marketings of 133.1 billion pounds of milk, the amount remitted to CCC as a result of the deduction with respect to milk marketed commercially by producers would be $561 million, thereby reducing CCC costs to about $1.5 billion.

The implementation of the deduction program would principally affect the farm income in 8 States—Wisconsin, California, New York, Minnesota, Pennsylvania, Michigan, Ohio and Iowa—that produce more than 60 pecent of the nation's milk. However, every milk producer in the United States (as defined in regulations implementing the program) who markets milk commercially will be affected by the program, including those who market milk directly to consumers.

Determination

Accordingly, it is determined that, effective for the period October 1, 1982, through September 30, 1983, the level of price support shall be $13.10 per hundredweight for manufacturing grade milk of national average milkfat content, 3.67 percent. This support level will assure an adequate supply of pure and wholesome milk to meet current needs, reflect changes in the cost of production, and assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs.

The CCC purchase prices for butter, cheese and nonfat dry milk for the period October 1, 1982 through September 30, 1983 are as follows:

	Dollars per pound
Butter, U.S. grade A or higher, New York City and Jersey City, Newark and Secaucus, New Jersey [1]	1.5200
Nonfat dry milk (spray) U.S. extra grade (but not more than 3.5 percent moisture). 50-pound bags:	
Unfortified	.9400
Fortified (vitamins A and D)	.9525
Cheddar cheese, standard moisture basis:	
40-pound blocks, U.S. grade A or higher	1.3950
500-pounds in fiber barrels, U.S. extra grade	1.3650

[1] The price of butter located at any other point outside these cities will be the price at New York City minus 80 percent of the lowest published domestic railroad through freight rate for frozen butter in effect on October 1 of each marketing year from such other point to New York City. The appropriate freight car rate will be calculated on a per pound gross weight basis for a 60,000 pound carlot. However, the price at any location shall be not less than the purchase price at New York City minus 3 cents per pound. For any location in Wisconsin or Kentucky, the price shall not exceed the purchase price at Chicago which will be $1.49 per pound.

It is further estimated that net price support purchases by the Commodity Credit Corporation of milk or milk products will exceed 5 billion pounds milk equivalent during the 1983 fiscal year. A deduction of 50 cents per hundredweight shall be made from the proceeds of the sale of all milk marketed commercially by producers which shall be remitted to the Commodity Credit Corporation to offset a portion of the cost of the milk price support program beginning December 1, 1982. The deduction shall be made in accordance with regulations issued by USDA.

(Sec. 201 (c) and (d) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446); and secs. 4 and 5 of the Commodity Corporation Charter Act, as amended (15 U.S.C. 714b and 714c))

Signed at Washington, D.C. on September 22, 1982.

John R. Block,

Secretary of Agriculture.

[FR Doc. 82-26411 Filed 9-23-82; 8:45 am]

BILLING CODE 3410-05-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Filed under Subpart Q of the Board's Procedural Regulations (see, 14 CFR 302.1701 et. seq.); week ended September 17, 1982.

Subpart Q Applications

The due date for answers, conforming, application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Sept. 15, 1982	40987	Taino International Airways, Inc., c/o George Volsky, 1522 K Street, N.W., Suite 1030, Washington, D.C. 20005. Application of Taino International Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies for authority to engage in scheduled air transportation of passengers, property and mail to the following domestic and overseas markets: (a) Fort Lauderdale, Florida and Atlantic City, New Jersey. (b) New York, N.Y. and Aguadilla, Ponce and San Juan, Puerto Rico. Conforming Applications, motions to modify scope, and Answers may be filed by October 13, 1982.
Sept. 17, 1982	40993	Ellis Air Taxi, Inc., c/o W. T. Ellis, P.O. Box 106, Glennallen, Alaska 99586 Application of Ellis Air Taxi, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies for a certificate of public convenience and necessity for an indefinite term to perform scheduled intrastate air transportation of persons, property and mail within the State of Alaska between the terminal point Glennallen (Gulkana Airport), the intermediate points: McCarthy, May Creek, Chisana. Conforming Applications, motions to modify scope, and Answers may be filed by October 15, 1982.
Do	40994	Unicorn Air, Ltd., c/o Stephen L. Gelband, Hewes, Morella & Gelband & Lamberton, 1010 Wisconsin Avenue, N.W., Suite 640, Washington, D.C. 20007. Application of Unicorn Air, Ltd., pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies for a certificate of public convenience and necessity to provide scheduled interstate and overseas air transportation, and for a fitness determination. Conforming Applications, motions to modify scope, and Answers may be filed by October 15, 1982.
Do	40995	Unicorn Air, Ltd., c/o Stephen L. Gelband, Hewes, Morella & Gelband & Lamberton, 1010 Wisconsin Avenue, N.W., Suite 640, Washington, D.C. 20007. Application of Unicorn Air, Ltd., pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests issuance of a certificate of public convenience and necessity which would authorize it to engage in scheduled foreign air transportation of passengers, property and mail, as follows: New York, NY; Chicago, IL; Atlanta, GA; Washington, DC/Baltimore, MD; Boston, MA; Houston, TX; San Francisco, CA; Denver, CO; New Orleans, LA; Tampa, FL; Newark, NJ; Detroit, MI; Miami, FL; Philadelphia, PA; Dallas, TX; Los Angeles, CA; Seattle, WA; Pittsburgh, PA; St. Louis, MO; Orlando, FL. and points in the following countries: United Kingdom, including London. Federal Republic of Germany, including Frankfurt. The Netherlands, including Amsterdam. Belgium, including Brussels. Conforming Applications, motions to modify scope, and Answers may be filed by October 15, 1982.
Do	40996	Air Ontario Limited, c/o James M. Burger, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036. Application of Air Ontario Limited pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations applies for a Foreign Air Carrier Permit to authorize it to engage in foreign scheduled air transportation of persons, property, and mail between London, Ontario and Cleveland, Ohio. Answers may be filed by October 15, 1982.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 82-26366 Filed 9-23-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40771]

American World Airways Fitness Investigation; Notice of Change of Hearing Location

In accordance with a notice issued by Chief Administrative Law Judge Elias C. Rodriguez, dated August 31, 1982, the hearing in the above-entitled proceeding, which was assigned to be held on September 29, 1982, at 9:30 a.m. (local time), in Room 1027, Main Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., will be held on that date at 9:30 a.m., in Room 1012, Main Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C.

Dated at Washington, D.C., September 21, 1982.

William A. Kane, Jr.,
Acting, Chief Administrative Law Judge.

[FR Doc. 82-26367 Filed 9-23-82; 8:45 am]

BILLING CODE 6320-01-M

Petition of Air Midwest, Inc.; Establishment of Subsidy Mail Rates

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order 82-9-66, petition of Air Midwest, Inc., for establishment of subsidy mail rate, Docket 40661.

SUMMARY: The Board is proposing to set the subsidy mail rate for the provision of service to eight Kansas and Colorado points at $2,125,536 for annual periods beginning May 4, 1982.

DATES: Objections: All interested persons having objections to the establishment of the subsidy mail rate shall file and serve upon all parties to Docket 40661, no later than September 30, 1982, a statement of objections, together with a summary of testimony, statistical data, or other material expected to be relied upon to support the stated objections.

ADDRESSES: Objections should be filed in Docket 40661, Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, and served upon all parties.

FOR FURTHER INFORMATION CONTACT: John R. Hokanson, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825

Connecticut Avenue, NW., Washington, D.C. 20428. (202) 673–5368.

SUPPLEMENTARY INFORMATION: The complete text of Order 82–9–66 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a post card request for the order to the Distribution Section, at the above address.

Dated: September 17, 1982.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82–26368 Filed 9–23–82; 8:45 am]

BILLING CODE 6320–01–M

[Order 82–9–56; Order 40967]

Passenger Fares Between the United States and Denmark, Norway, and Sweden; Scandinavian Airlines System; Order of Suspension and Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 7th day of September, 1982.

Scandinavian Airlines System (SAS) has filed the following tariff revisions with the Board:

(1) New winter group inclusive tour (GIT) fares from Scandinavia to New York. The fares would apply for travel from October 1, 1982, through March 31, 1983, with a holiday season blackout from December 16 through January 5. The fares would be available on Thursday or Friday flights, with return Sunday or Monday (minimum stay three nights), for groups of two persons. The proposed fare levels are about 10–28 percent lower than eastbound GIT fares from New York to Scandinavia.

(2) New "YFLA" non-affinity group fares from Scandinavia to Miami, Ft. Lauderdale and Honolulu. The fares would apply for travel from October 1, 1982, through either December 10, 1982, December 31, 1982, or March 31, 1983, for groups of 50 (Florida) or 15 (Honolulu). The new YFLA fares to Florida represent reductions of 1–9 percent from last year's YFLA levels; there were no comparable fares to Honolulu last year.[1]

(3) New normal economy and APEX fares between Spokane and Scandinavia, for travel beginning September 19, 1982, on a joint routing with Republic Airlines between Spokane and Seattle and SAS between Seattle and Scandinavia. The proposed APEX fares are 7–13 percent lower than comparable fares of Northwest Airlines.[2]

We have decided to suspend SAS' filings. Although we are always reluctant to suspend proposals which offer fare reductions to the traveling public, recent actions of the Scandinavian Governments denying fare filings of U.S. carriers and otherwise hampering their ability to compete in the Scandinavia market require us to review SAS tariff proposals more closely than we would prefer.

The actions of Denmark, Norway and Sweden have severely restricted the price/quality of service options available to U.S. and Scandinavian passengers and have imposed a higher array of fares than would otherwise exist. Therefore, we are not inclined to give sympathetic consideration to SAS fare proposals at this time.

Although we continue to hope for an acceptable resolution of U.S.-Scandinavian bilateral difficulties through negotiation, under present circumstances we have no choice but to find that it is in the public interest to suspend SAS' filing.

Accordingly, acting under the Federal Aviation Act of 1958, as amended, and particularly sections 102, 204(a), and 1002(j):

1. We shall institute an investigation to determine whether the fares and provisions set forth in the attached Appendix and rules, regulations or practices affecting such fares and provisions, are or will be unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial or otherwise unlawful or contrary to the public interest; and if we find them to be unlawful or contrary to the public interest, to act appropriately to prevent the use of such fares and provisions of rules, regulations, or practices;

2. Pending hearing and decision by the Board, we suspend and defer the use of the tariff provisions in the attached Appendix from September 19, 1982, to and including September 18, 1983, unless otherwise ordered by the Board, and shall permit no changes to be made therein during the period of suspension except by order or special permission of the Board;

3. We shall submit this order to the President[3] and, unless disapproved by the President within ten days, it shall become effective September 19, 1982; and

4. We shall file copies of this order in the aforesaid tariff and serve them on Scandinavian Airlines System and the Ambassadors of Denmark, Norway and Sweden in Washington, D.C.

We shall publish this order in the **Federal Register.**

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

APPENDIX

International Passenger Rules Tariff No. IPF–2, CAB No. 376, Issued by Airline Tariff Publishing Company, Agent

The provisions of Rule 4100 (Weekend Group Inclusive Tour Fares from Scandinavia to New York) on 4th Revised Pages 477 and 478

The provisions of Rule 4230 (Non-Affinity Group Fares from Scandinavia to the U.S.A.) applicable to Scandinavian Airlines System on the following pages—

16th Revised Pages 493 and 494 (issued June 29, 1982)
16th Revised Pages 493 and 494 (issued June 30, 1982)
17th Revised Pages 493 and 494
18th Revised Pages 493 and 494
19th Revised Pages 493 and 494

Transatlantic Passenger Fares Tariff No. TAF–2 CAB No. 421 Issued by Airline Tariff Publishing Company, Agent

From	To	On
All YFLA fares		
Copenhagen	Ft. Lauderdale	Original, 1st, 2nd, 3rd Revised Pages SK–18.
Do	Miami	Original, 1st, 2nd Revised Pages SK–19.
Oslo	Ft. Lauderdale	Original, 1st, 2nd Revised Pages SK–24.
Do	Miami	Original Page SK–25.
Gothenburg/ Stockholm.	Ft. Lauderdale	Original Page SK–30.
Gothenburg	Miami	Original Page SK–31.

All YFLA, YFLA1, and YFLA2 fare class applications on Original, 1st, 2nd Revised Pages SK–1.

All YGW fare class applications on Original, 1st, 2nd Revised Pages SK–2.

From	To	On
All YLFA 1 and YFLA 2 fares		
Copenhagen	Honolulu	Original, 1st, 2nd, 3rd Revised Pages SK–18.
Oslo	do	Original Page SK–25.
Gothenburg/ Stockholm.	do	Original Page SK–30.

[1] SAS does not have authority to serve Florida or Hawaii. It would interline with U.S. domestic carriers at New York or West Coast points, respectively.

[2] Northwest has no direct normal economy fares on file between Spokane and Scandinavia.

[3] We submitted this order to the President on September 7, 1982.

From	To	On
All YLFA 1 and YFLA 2 fares All YGW fares		
Copenhagen	New York	Original, 1st, 2nd Revised Pages SK-19.
Oslo	do	Original, 1st, 2nd, 3rd Revised Pages SK-27.
Stockholm	do	Original Page SK-32.
Between	And	On
All fares		
Copenhagen	Spokane	2nd Revised Page SK-20.
Bergen/ Kristiansand.	do	3rd Revised Page SK-28.
Oslo/ Stavenger.	do	Original Page SK-28-A.
Gothenberg/ Malmo/ Stockholm.	do	2nd Revised Page SK-34.

Routing No. 58 on 1st Revised Page SK-44.

Note.—This Suspension does not stay the cancellation of International Passenger Fares Tariff No. TAF-1, CAB No. 377, issued by Airline Tariff Publishing Company, Agent.

[FR Doc. 82-26369-Filed 9-23-82; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.
Title: 1982 Census of Manufacturers: Report From Penal Institutions.
Type of Request: New.
Burden: 52 respondents; 104 reporting hours.
Needs and Uses: The "Report From Penal Institutions" is conducted as part of the 1982 Economic and Agriculture Censuses in accordance with the requirements of Title 13, United States Code. The data from this report are used by the Bureau of Economic Analysis in its benchmarking of national accounts and are the only source of measured output of manufactured products produced by penal institutions.
Affected Public: State and Federal prisons.
Frequency: Quinquennially.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Timothy Sprehe, 395-4814.

* * * * *

Agency: Bureau of the Census.
Title: Economic Censuses.
Type of Request: Extension.
Burden: 10,000 respondents; 83,333 reporting hours.
Needs and Uses: Questions are added to the IRS income tax forms in years covered by the quinquennial economic censuses. Answers to these questions determine the establishment count for approximately 5 million businesses. This relieves these businesses from filing census reports due to the availability of IRS administrative records.
Affected Public: Sole proprietors, partnerships, and small corporations.
Frequency: Nonrecurring.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Timothy Sprehe, 395-4814.

* * * * *

Agency: Bureau of the Census.
Title: 1982 Census of Agriculture Coverage Evaluation.
Type of Request: New.
Burden: 20,000 respondents; 4,833 reporting hours.
Needs and Uses: The purpose of the 1982 Census of Agriculture Rural Coverage Evaluation is to estimate the number and characteristics of farms not on the census of agriculture mail list. The results are published in order to provide users of census data information that might affect their use of the data.
Affected Public: Housing units across the U.S.
Frequency: Nonrecurring.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Timothy Sprehe, 395-4814.

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Agency: Bureau of the Census.
Title: Construction Progress Report (Multi-family Residential).
Type of Request: Extension.
Burden: 3,000 respondents; 7,500 reporting hours.
Needs and Uses: These statistics are used in economic research and analysis to assess the effect of construction activity on the economy and for direct input to the National Income and Products Accounts. They are also used for marketing research and by private business.
Affected Public: Owner of multi-family residential buildings.
Frequency: Monthly.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Timothy Sprehe, 395-4814.

* * * * *

Agency: Bureau of the Census.
Title: Current Population Survey.
Type of Request: Revision.
Burden: 174,000 respondents; 90,480 reporting hours.
Needs and Uses: The data will be used to determine differences in the characteristics of union members vs. non-union workers.
Affected Public: Household respondents in one-fourth of monthly sample of 58,000 interviewed households.
Frequency: Monthly.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Timothy Sprehe, 395-4814.

* * * * *

Agency: Bureau of the Census.
Title: Survey of Plant Capacity Utilization.
Type of Request: Revision.
Burden: 9,000 respondents; 13,500 reporting hours.
Needs and Uses: Survey results are used by the Federal Reserve Board to benchmark its monthly series and by other government agencies, such as the Bureau of Industrial Economics and the Bureau of Economic Analysis, business firms, trade associations, and research organizations to measure inflationary pressures and capital flows, to understand productivity determinants, to forecast economic trends, and to analyze industry trends and averages.
Affected Public: Manufacturing establishments.
Frequency: Annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Timothy Sprehe, 395-4814.

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Agency: Bureau of Economic Analysis.
Title: Industry Classification Questionnaire (Foreign Direct Investment in the United States).
Type of Request: Revision.
Burden: 1,750 respondents; 875 reporting hours.
Needs and Uses: Secures data necessary for classifying by industry U.S. business enterprises in which a foreign person has an equity interest of 10 percent or more. Required for the preparation of the balance of payments and international investment accounts of the United States.
Affected Public: U.S. affiliates of foreign companies.
Frequency: On occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Timothy Sprehe, 395-4814.

* * * * *

Agency: Bureau of Economic Analysis.
Title: Benchmark Survey of U.S. Direct Investment Abroad—1982.
Type of Request: New.
Burden: 3,600 respondents; 414,000 reporting hours.
Needs and Uses: Secures financial and operating data on U.S. parent companies and their foreign affiliates, including information on balance sheets, income statements, external financing by transactor, employment, U.S. trade, sales by destination and affiliation; property, plant, and equipment, and research and development expenditures; and transactions between U.S. parents and their foreign affiliates. Required for preparation of the balance of payments, international investment, and GNP accounts.
Affected Public: U.S. persons owning foreign business enterprises.
Frequency: Quinquennially.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Timothy Sprehe, 395-4814.

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Agency: Bureau of Economic Analysis.
Title: Industry Classification Questionnaire (Direct Investment Abroad).
Type of Request: Revision.
Burden: 550 respondents; 550 reporting hours.
Needs and Uses: Secures data necessary for classifying by industry foreign business enterprises in which a U.S. person has an equity interest of 10 percent or more.

Required for the preparation of the balance of payments and international investment accounts of the United States.

Affected Public: U.S. companies with foreign investments.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Timothy Sprehe, 395–4814.

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Agency: Economic Development Administration.

Title: Current and Projected Employee and Payroll Data.

Type of Request: Extension.

Burden: 1,000 respondents; 1,000 reporting hours.

Needs and Uses: In the pre- and post-approval review of projects, EDA needs information from beneficiaries of its financial assistance to evaluate their: (1) job development efforts; (2) civil rights posture; and (3) business and financial plans and practices.

Affected Public: Recipients of EDA assistance.

Frequency: On occasion, annually.

Respondent's Obligation: Required to obtain or retain benefit.

OMB Desk Officer: Timothy Sprehe, 395–4814.

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Agency: International Trade Administration.

Title: Scope and Impact of Oil and Gas Sanctions.

Type of Request: New.

Burden: 40 respondents; 80 reporting hours.

Needs and Uses: The information obtained would be used to identify foreign dependence on U.S. oil/gas equipment and technology.

Affected Public: U.S. manufacturers and distributors of oil and gas equipment and technology, their foreign affiliates and licensees.

Frequency: Nonrecurring.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ken Allen, 395–3785.

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Agency: International Trade Administration.

Title: Questionnaire for Major Producers and Importers of Nuts, Bolts and Large Screws of Iron and Steel.

Type of Request: New.

Burden: 89 respondents; 890 reporting hours.

Needs and Uses: This survey is required to satisfy the agency's statutory responsibilities for an investigation of the industrial fastener industry per Section 232 of the Trade Expansion Act of 1962, as amended.

Affected Public: Producers of and import wholesalers of nuts, bolts, and large screws of iron or steel.

Frequency: Nonrecurring.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ken Allen, 395–3785.

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Agency: International Trade Administration.

Title: Copper Controlled Materials.

Type of Request: Extension.

Burden: 1,080 respondents; 540 reporting hours.

Needs and Uses: The information collected is required for the enforcement and administration of the delegated authority of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061; *et seq.*), to manage the consumption and use of copper and copper base alloys.

Affected Public: Copper producers.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Kken Allen, 395–3785.

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Agency: National Oceanic and Atmospheric Administration.

Title: Dealer Purchases and Trip Interviews.

Type of Request: Revision.

Burden: 4,547 respondents; 8,474 reporting hours.

Needs and Uses: Data on dealer purchases and from trip interviews are required inputs in proposing and evaluating fishery management and development activities of the National Marine Fisheries Service.

Affected Public: Commercial fishermen and dealers.

Frequency: On occasion, weekly, and monthly.

Respondent's Obligation: Voluntary, required to obtain or retain benefit, and mandatory.

OMB Desk Officer: Ken Allen, 395–3785.

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Agency: National Oceanic and Atmospheric Administration.

Title: European Weekly Frozen Fish Report and Export Opportunities Evaluation.

Type of Request: New.

Burden: 3,140 respondents; 248 reporting hours.

Needs and Uses: The *European Weekly Frozen Fish Report* project and the publishing of *Fishery Export Opportunities* commenced in 1979 at the request of the New England fishing industry. This evaluation is necessary to gauge the usefulness of these reports to the U.S. fishing industry and to identify areas for improvement in the reports. Evaluation results will determine if reports will be continued or need to be revised to meet industry needs.

Affected Public: Seafood producers, seafood exporters.

Frequency: Nonrecurring.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ken Allen, 395–3785.

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Agency: National Oceanic and Atmospheric Administration.

Title: Automatic Picture Transmission (APT) Station Questionnaire.

Type of Request: New.

Burden: 400 respondents; 200 reporting hours.

Needs and Uses: This information collection will be used to maintain an address and status file for all satellite ground stations, which will enable the Department to provide information on current and proposed environmental satellite operations to such stations. In addition, the questionnaire will be used to collect information for the Department's data base which plays a role in the design and operation of satellites, and helps determine applications of satellite data.

Affected Public: U.S. and foreign meteorological space agencies, academic and commercial institutions, and amateur radio operators.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ken Allen, 395–3785.

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Agency: National Oceanic and Atmospheric Administration.

Title: Hawaii Fish Dealer Survey.

Type of Request: Extension.

Burden: 110 respondents; 55 reporting hours.

Needs and Uses: Survey will contribute to the analysis of the wholesale fisheries sector by evaluating the impact of various management alternatives. Additionally, domestic processing capability will be estimated and used to determine optimal yield for fishery management plans.

Affected Public: Fish wholesalers.

Frequency: Bimonthly random sample.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ken Allen, 395–3785.

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Agency: National Telecommunications and Information Administration.

Title: Public Telecommunications Facilities Program Grant Application.

Type of Request: Extension.

Burden: 816 respondents; 5,490 reporting hours.

Needs and Uses: The Public Telecommunications Financing Act of 1978 as amended by the Public Broadcasting Amendments Act of 1981 authorized grants to be awarded for the planning and construction of public telecommunications facilities. In order to monitor the use of grant funds, grantees are required to submit certain reports annually.

Affected Public: Public telecommunications stations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefit.

OMB Desk Officer: Ken Allen, 395–3785.

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 recommendations for the proposed information collections should be sent to the respective OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 82–26395 Filed 9–23–82; 8:45 am]

BILLING CODE 3510–CN–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Restraint Level for Certain Cotton, Wool, and Man-Made Fiber Apparel Products From Mauritius

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing an import restraint level of 115,000 dozen for cotton, wool, and man-made fiber knitwear apparel products in Categories 338, 339, 345, 438, 445, 446, 638, 639, 645, and 646, as a group, produced or manufactured in Mauritius and exported to the United States during the twelve-month period beginning on October 1, 1982 and extending through September 30, 1983.

(A detailed description of the textile categories in terms of T.S.U.S.A. number was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 (47 FR 20654))

SUMMARY: The Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of October 2 and 5, 1981 between the Governments of the United States and Mauritius establishes a twelve-month period of restraint for cotton, wool, and man-made fiber knitwear apparel products in Categories 338, 339, 345, 438, 445, 446, 638, 639, 645, and 646, as a group, in the third agreement period beginning on October 1, 1982 and extending through September 30, 1983. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in Categories 338, 339, 345, 438, 445, 446, 638, 639, 645, and 646, as a group, produced or manufactured in Mauritius and exported during the twelve-month period beginning on October 1, 1982 and extending through September 30, 1983, in excess of 115,000 dozen.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: October 1, 1982.

FOR FURTHER INFORMATION CONTACT: Diana Bass, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230; (202/377–4212).

Walter C. Lenahan,

Acting Chairman, Committee for the Implementation of Textile Agreements.

September 21, 1982.

Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 2 and 5, 1981, between the Governments of the United States and Mauritius and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on October 1, 1982 and extending through September 30, 1983, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in Categories 338, 339, 345, 438, 445, 446, 638, 639, 645, and 646, as a group, in excess of 115,000 dozen.

In carrying out this directive entries of textile products in Categories 338, 339, 345, 438, 445, 446, 638, 639, 645, and 646, as a group, which have been exported to the United States on and after April 1, 1982 and extending through September 30, 1982, shall, to the extent of any unfilled balance, be charged against the level of restraint established for such goods during that six-month period. In the event the level of restraint established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this letter.

The level set forth above is subject to adjustment in the future according to the provisions of the bilateral agreement of October 2 and 5, 1981, between the Governments of the United States and Mauritius, which provide, in part, that (1) the level may be exceeded by not more than 7 percent for carryforward and (2) the two governments agree to consult on any question arising in the implementation of the bilateral agreement. Any appropriate adjustments under the provisions of the agreement, referred to above, will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 (47 FR 20665).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of Mauritius and with respect to imports of cotton, wool and man-made fiber textile products from Mauritius 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,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82–26396 Filed 9–23–82; 8:45 am]

BILLING CODE 3510–25–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Community College of the Air Force (CCAF) Advisory Committee; Meeting

The Community College of the Air Force Advisory Committee will hold a meeting on October 19, 1982 at 8:30 a.m. in the Conference Room, Number 121, Building 836, located at Maxwell Air Force Base, Montgomery, Alabama.

The meeting is open to the public.

Agenda items include: State of the College, Academic Policy Considerations, Manpower Plan Review, Accreditation Visit Schedule, New Computer System, Catalog, and Student Affairs.

For further information contact Lt. Col. James H. Conely, 205–293–6386, Community College of the Air Force, Maxwell, AFB, Alabama 36112.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 82–26304 Filed 9–23–82; 8:45 am]

BILLING CODE 3910–01–M

Engineers Corps

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Study To Determine the Feasibility of Modifying Hodges Village Dam and Reservoir, Oxford, Massachusetts

AGENCY: New England Division, Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: 1. The proposed action is a plan to provide improved water quality in a portion of the French River in Massachusetts and Connecticut. During the course of the study, other water resource needs have also been investigated, including flood control

recreation, and fish and wildlife management.

2. The alternative being considered include: (a) Improving water quality in the French River downstream of the towns of Webster and Dudley, Massachusetts by providing water storage at Hodges Village Dam for low flow augmentation releases in conjunction with advanced wastewater treatment at the Webster treatment plant. Water storage would be provided by the creation of a 200 acre seasonal impoundment.

(b) Take no action.

3. (a) Close coordination with key resource agencies and local interests is underway to determine the problems and needs to be addressed and to identify the significant issues related to each alternative being considered. Additional coordination with other agencies will be made as issues and alternatives are more clearly defined. Affected Federal, State and local agencies and other interested organizations and parties will continue to be encouraged to participate in the identification of issues, problems and needs and the formulation of alternative courses of action by communicating with the addressee listed below.

(b) Significant issues to be analyzed in depth in the DEIS include river basin water quality improvement needs, fish and wildlife habitat requisites, potential impacts on existing recreation usage, and reservoir vegetation clearing impacts.

(c) Consultation with the Massachusetts State Historic Preservation Officer, and the U.S. Department of Interior will be initiated in accordance with the National Historic Preservation Act of 1966 and Executive Order 11593. Planning is being coordinated with the U.S. Fish and Wildlife Service on an informal and formal basis, including the procedures required by the Fish and Wildlife Coordination Act of 1958 and the Endangered Species Act Amendments of 1978.

4. A scoping meeting will be held. The date and location will be identified through Public Notice procedures.

5. the DEIS is scheduled to be completed and available for review in August 1982.

ADDRESS: Information concerning the proposed action and DEIS can be obtained by contacting: Charles B. Freeman, Impact Analysis Branch, New England Division, U.S. Army Corps of Engineers, 424 Trapelo Road, Waltham, Massachusetts 02254, ATTN: NEDPL–I, Phone (617) 647–8139, (FTS 839–7139).

Dated: September 16, 1982.

Carl B. Sciple,

Colonel, Corps of Engineers Division Engineer.

[FR Doc. 82–26303 Filed 9–23–82; 8:45 am]

BILLING CODE 3710–24–M

Office of the Secretary

Defense Advisory Committee on Women in the Services (DACOWITS); Meeting

Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Women in the Services (DACOWITS) will be held 7–11 November 1982 at the Bordeaux Motor Inn Convention Center, Fayetteville, North Carolina.

The purpose of the DACOWITS Committee is to assist and advise the Secretary of Defense on matters relating to women in the Services. The Committee meets semiannually.

Sessions will be conducted daily as indicated and will be open to the public. The agenda will include the following meeting and discussions:

Sunday, 7 November 1982—**Bordeaux Motor Inn Convention Center**

12:00 noon–9:00–p.m.–Registration
2:00 p.m.–Executive Committee Meeting
3:00 p.m.–5:00 p.m.–Chair's Procedural Session for all DACOWITS Members, Former Members, and Military Representatives
5:00 p.m.–6:30 p.m.–Subcommittee Meeting
7:00 p.m.–8:30 p.m.–"No-Host" Cocktail Buffet

Monday, 8 November 1982—**Bordeaux Motor Inn Convention Center**

8:00 a.m.–12:00 noon–Registration
8:00 a.m.–8:45 a.m.–Official Opening
9:00 a.m.–12:30 p.m.–OSD/Service Briefings
12:30 p.m.–2:00 p.m.–Official Department of Defense Luncheon (By invitation only)
2:00 p.m.–3:30 p.m.–OSD/Service Briefings
3:30 p.m.–5:30 p.m.–Subcommittee Meetings
7:00 p.m.–10:30 p.m.–Official Department of Defense Reception and Dinner (By invitation only)

Tuesday, 9 November 1982—**Fort Bragg**

8:00 a.m.–5:00 p.m.–Field Trip to Fort Bragg, Fayetteville, North Carolina

Wednesday, 10 November 1982—**Bordeaux Motor Inn Convention Center**

8:30 a.m.–12:00 noon–OSD/Service Briefings
12:00 noon–1:30 p.m.–"No Host" Luncheon
1:30 p.m.–4:30 p.m.–Subcommittee Meetings

Thursday, 11 November 1982—**Bordeaux Motor Inn Convention Center**

8:00 a.m.–9:45–General Business Session Adjourn

Members of the public will not be permitted to go on the field trip or attend the social functions.

The following rules and regulations will govern the participation by members of the public at the meeting:

(1) All business sessions, to include the Executive Committee sessions, will be open to the public.

(2) Interested persons may submit a written statement and/or make an oral presentation for consideration by the Committee during the meeting.

(3) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify Captain Mary J. Mayer, USAF, DACOWITS Executive Secretary, OASD (Manpower, Reserve Affairs and Logistics), Room 3D769, the Pentagon, Washington, D.C. 20301, (202) 697–2122 by 22 October 1982.

(4) Length and number of oral presentations to be made will depend on the number of requests received from the members of the public.

(5) Oral presentations by members of the public will be permitted only from 8:00 a.m. to 8:30 a.m. on Thursday, 11 November 1982, before the full Committee.

(6) Each person desiring to make an oral presentation or submit a written statement must provide the DACOWITS Secretariat with 55 copies of the presentation/statement by 22 October 1982.

(7) Persons submitting a written statement only for inclusion in the minutes of the meeting must submit one (1) copy either before or during the meeting or within (5) days after the close of the meeting.

(8) Members of the public will not be permitted to enter into oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(9) Members of the public will be permitted to orally question the scheduled speakers if time allows after the official participants have asked questions and/or made comments.

(10) Questions from the public will not be accepted during the subcommittee sessions, the Executive Committee sessions, or the Business Session on Thursday, 11 November 1982.

Additional information regarding the Committee and/or this meeting may be obtained by contacting the DACOWITS Executive Secretary, OASD (MRA&L), the Pentagon, Room 3D769, Washington, D.C. 20301.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

September 21, 1982.

[FR Doc. 82–26397 Filed 9–23–82; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Environmental Record of Decision on the 1982 Rate Proposal

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Record of Decision.

SUMMARY: I have decided to submit to the Federal Energy Regulatory Commission (FERC) a proposal to adjust BPA's wholesale power rates in order to achieve total revenues of $2.2 billion in Fiscal Year (FY) 1983. The decisions made regarding the proposed wholesale power rates are incorporated into the wholesale power rate schedules which are attached as Exhibit B to the rate order filed with FERC. These recommendations are based on a comprehensive review of BPA's Final Environmental Impact Statement (EIS) on the 1982 Rate Proposal, as well as all other materials appurtenant to the rate process. A draft EIS was prepared on BPA's wholesale power rate proposal and circulated to the public for review and comment. Notice of availability of the draft EIS was published in the Federal Register and comments were accepted through the close of BPA's formal rate hearings on wholesale power rates on June 25, 1982. Subsequent to the close of these hearings, a final EIS was prepared based on the draft EIS and comments received on the draft EIS. Copies of the final EIS have been distributed to interested public and additional copies are available upon request from the BPA Environmental Manager.

The proposed rates would permit BPA to collect sufficient revenue to meet its statutorily mandated repayment requirement. Pending FERC approval, the proposed rate adjustment is scheduled to become effective on October 1, 1982. A formal appeal process allows those who desire to comment on the final EIS or the Record of Decision to intervene by filing a petition with FERC.

This Record of Decision is being issued concurrently with the publication of the final EIS pursuant to the Council on Environmental Quality Regulations (40 CFR 1506.10(b)(2) 1981).

SUPPLEMENTARY INFORMATION:

Alternatives Considered and Environmental Impacts

A number of alternative revenue levels and rate designs were evaluated in the EIS. These alternatives were selected in a manner intended to insure consideration of the range of all reasonable alternatives.

Revenue Level Alternatives: The EIS examined five basic revenue alternatives: no action; the initial proposal; modification of the proposal to exclude payment of irrigation assistance, extend the amortization period for generation facilities, and exclude recovery of increased shared facility costs resulting from the termination of two nuclear plants under construction by the Washington Public Power Supply System; long run incremental cost (LRIC) pricing; and phased-in LRIC pricing.

Under the no action alternative, BPA would maintain its existing rate structure, resulting in a revenue deficiency of $731 million, given initial estimated FY 1983 loads. Consequently, if this alternative were implemented, BPA would be prohibited from meeting its financial obligations, its statutory requirement to be self-financing would be violated, and the shortfall would have to be recovered from future ratepayers.

Revenues derived under the proposed revenue level alternative would be sufficient to meet BPA's FY 1983 revenue requirement as determined in BPA's initial proposal and would represent a 43 percent increase over the estimated revenues that would be collected under current rates during FY 1983 using the initial FY 1983 load forecast. This alternative allows BPA to meet all financial obligations and provides that customers receiving service during FY 1983 would pay the full costs incurred during FY 1983 to provide that service.

Several aspects of BPA's repayment analysis could be modified to reduce BPA's revenue requirements. However, these modifications are either outside BPA's current statutory authority, and thus would require Congressional action in order to implement, or would violate current contractual agreements. One way the repayment analysis could be modified would be to eliminate irrigation assistance from BPA's revenue requirement. The effect, however, would be so small that the total revenue requirement for FY 1983 would be virtually unaffected. BPA's repayment process also could be modified by extending the amortization period for generation facilities, thereby reducing the proposed increase in the revenue by approximately 2 percent. Finally, if shared costs of Supply System Plants 4 and 5 were excluded from the budgets for Plants 1 and 3, BPA's revenue requirement for FY 1983 would decrease by approximately 3 percent.

LRIC or marginal cost based rates would price wholesale power at the projected long run cost of acquiring new power resources in the Pacific Northwest. Rates based on the long run incremental costs developed in BPA's 1982 Time-Differentiated Long Run Incremental Cost Analysis if applied to BPA's projected FY 1983 sales volume would produce revenues of approximately $5.7 billion. These revenues would be approximately 250 percent higher than revenues recovered under the no action revenue alternative and 133 percent higher than revenues received under the proposed alternative.

One method of easing the impact of shifting to LRIC pricing would be to phase in the LRIC rates over a 5-year period. One-fifth of the difference between rates based on the proposed rate level and rates based on the 1982 LRIC Analysis could be added to the proposed rate each year for 5 years. Rates designed in this manner and applied to BPA's projected FY 1983 sales volume would recover revenues of approximately $3.1 billion. This would represent an increase of 90 percent over revenues recovered under the no action alternative and 27 percent over revenues collected under the proposed alternative.

Both the revenue level based on LRIC pricing and that based on graduated LRIC would violate the directive in the Bonneville Project Act that BPA rates be the lowest possible consistent with sound business principles. Potential questions also would be raised as to how excess revenues should be distributed or invested.

Increases in the price of electricity discourage consumption. Correspondingly, the level of adverse physical environmental impact associated with the production and consumption of electricity can be expected to vary inversely with the price of electricity (revenue level). These changes in impact would be offset to some extent by changes in the use of alternative forms of energy such as wood, oil, and natural gas. Some alternative energy sources (e.g., solar or wind) may involve lower levels of environmental impact than those associated with conventional thermal generation; other alternatives (e.g., wood) may involve higher levels of impact.

In contrast to physical environmental impacts, socioeconomic impacts would be expected to increase directly with the price of electricity (revenue level). The level of revenue produced by rates based on marginal cost, for example, could have substantial adverse

economic impacts on virtually all regional power consumers, particularly irrigators and low income residential consumers. However, BPA's October 1, 1982, rate proposal is not expected to have serious economic consequences for the Region's electricity consumers (EIS Chapter V(B)(3)).

It is my conclusion after reviewing all pertinent information that the revenue increase I am proposing is the least harmful from an environmental standpoint. It recognizes both the need to minimize potential adverse impacts to the physical environment associated with increases in the use of electricity, as well as the need to take account of the socioeconomic consequences of increases in electricity rates. I believe that the socioeconomic effects of my proposal are within reason and would not result in undue hardship for BPA's customers. I recognize that, on the one hand, the impacts of this proposed rate increase may include reduced growth in the demand for electricity, a lowered rate of new resource additions, and spurred development of alternative energy sources. On the other hand, these impacts also may include additional air pollution, associated with increased use of woodstoves, a strain on lower income groups to stay within their budgets, and a somewhat reduced rate of growth within the region of irrigated agriculture. The proposed revenue increase also will enable BPA to conform to its statutory guidelines for meeting repayment requirements and to ensure the prudent operation of the Federal Columbia River Power System (FCRPS).

Rate Design Alternatives: I considered the environmental effects of several potentially feasible rate design alternatives in arriving at my decision regarding the design of specific rate schedules. Such schedules included those applicable to the sale of priority firm power, industrial and modified firm power, new resources firm power, nonfirm energy, and firm capacity. I did not consider alternatives to the other rate schedules because I do not anticipate that revenues from sales under these rates or associated environmental effects will be significant.

I am proposing a uniform demand/energy rate structure for the priority firm rate with a daily and seasonal differential in the demand charge and a seasonal differential in the energy charge. The alternatives considered for the proposed structure of the priority firm rate include tiered rates and rates based on the inverse elasticity principle. Tiered rates involve application of different rates to specific blocks of consumption. Under the inverse elasticity approach, customers most responsive to an increase in the cost of electricity would be charged rates closer to incremental costs than those rates charged less elastic customers. I chose to exclude tiered rates from the rate proposal because of unresolved concerns about their effects on BPA revenue stability, the potential that they might unnecessarily duplicate the function of BPA's billing credit program, and variations they might produce in customer power costs. I rejected basing rates on the inverse elasticity principle because of the lack of reliable elasticity estimates for BPA's customer classes.

The industrial firm power rate schedule which I am proposing reflects a value of reserves credit that recognizes the value of reserves provided by BPA rights to interrupt direct-service industry (DSI) load. Alternatives I considered and rejected included eliminating the credit, providing a different amount of credit, applyng the credit in a different manner, or tiering the rates. BPA conducted an extensive study to evaluate the reserves offered by DSI's. Alternative methods considered for applying the reserve credit or tiering the rates could create revenue stability problems. Elimination of the credit would violate the requirements of the Pacific Northwest Electric Power Planning and Conservation Act.

The new resources rate that I am proposing would be based on the cost of exchange recources. An alternative to the proposed rate would be a rate similar to the existing rate that is based on an averaging of the power costs of all new resources acquired by BPA. However, such a rate may cause this power to be unmarketable. No purchases have been made under the existing rate, as no investor-owned utilities in the Pacific Northwest have signed the offered power sales contracts which would allow them to purchase power at the new resources rate. A second alternative would be to include two levelized rates in the rate schedule, the first based on lowest cost new resources and the second based on BPA's most costly new resources, the output of which would be marketed as surplus power. This alternative was rejected because sales under the first level would underrecover the average cost of new resources, and power marketed under the second level would be so expensive it would be unmarketable.

The nonfirm rate schedule I am proposing consists of (1) a standard rate in effect at all times, except when a spill or imminent spill condition exists; (2) a spill rate; and (3) an incremental rate applied when the incremental cost of power produced or purchased concurrently with the nonfirm sale is greater than the standard rate. Alternative nonfirm rate schedules considered include a schedule similar to the existing schedule that reflects costs of resources used to produce Federal nonfirm energy, a share-the-savings rate similar to BPA's 1979 nonfirm energy rate, and a flat rate. The proposed rate was selected because it appears to be more acceptable to customers than the current rate, easier to administer than the share-the-savings rate, and more flexible in responding to water and market conditions than the flat rate. If the flat rate were set too high it could discourage purchases of nonfirm energy, resulting in less displacement of thermal resources and increased air and water pollution levels.

I am proposing a firm capacity rate that includes a provision for an additional monthly charge if capacity use exceeds 9 hours per day. In addition to the firm capacity rate I am proposing, I considered a firm capacity rate with no additional monthly charge for capacity use in excess of 9 hours per day and a time-differentiated firm capacity rate. The elimination of the excess capacity charge could result in the need for additional facilities to provide peaking capacity and associated negative physical and socioeconomic environmental impacts. The time-differentiated alternative would have approximately the same effect on the demand for capacity as the proposed rate, but would involve a greater level of administrative complexity.

Decision Factors

I based my decisions concerning level and design of the rates on legal requirements, rate design objectives, and a consideration of environmental impacts.

1. *Legal Requirements.* The Bonneville Project Act requires BPA to establish rates that will recover all costs associated with production, acquisition, and transmission of electric power and to recover the Federal investment in the Federal Columbia River Power System. This Act directs that rates be designed to "* * * encourage the widest diversified use of electric energy * * *" at the "* * * lowest possible rate * * * consistent with sound business principles." The Transmission System Act placed BPA on a self-financing basis, requiring it to pay all operating expenses with revenues collected from its rates.

The Pacific Northwest Power Planning and Conservation Act reaffirms

directives in previous statutes and expands BPA's responsibilities. The Act contains specific provisions regarding power sales, rates, and procedures for establishing rates.

2. *Rate Design Objectives.* In addition to meeting legal requirements, BPA rates are designed to meet its revenue requirement while distributing the burden in an equitable manner among recipients of the service, encourage conservation and minimize environmental impacts, and encourage efficient use of resources by reflecting costs incurred and benefits received. Additionally, consideration is given to rate continuity, ease of administration, revenue stability, customer acceptability, and ease of understanding.

3. *Environmental Impacts.* BPA's analysis of the environmental impacts of the alternatives revealed that the 1982 proposed revenue level would reduce regional load requirements from that expected if rates were not increased. Over time, decreases in electricity load growth would limit the regional need for new generation resources equal to three 500 megawatt coal plants and one 1,000 megawatt nuclear plant. Elimination of the new generation would avoid accompanying land use, solid waste, water, and air quality impacts associated with mining, processing, and power production. These avoided environmental effects would be somewhat offset by physical environmental effects resulting from increases in use of alternative energy sources.

The socioeconomic impacts of the revenue level I am proposing for recovery during FY 1983 would be significant for certain types of consumers. Low-income consumers would be more seriously affected by an increase in electricity rates than other residential consumers; the mental, physical, and economic well-being of the low-income elderly could be strained. The proposal could cause DSI's or other energy intensive industrial consumers to hasten decisions to either improve plant efficiency or shut down operations entirely. Some farmers could be forced to go out of business and some acreage could revert to dryland agriculture or be taken out of production. A decrease in irrigated acreage and DSI operations, while creating economic hardships for those employed in these areas, may produce certain benefits to the physical environment.

The proposed rate design alternatives would not cause environmental impacts significantly different than those experienced under BPA's current rate design.

Mitigation

Existing and proposed conservation programs offered by BPA could mitigate socioeconomic impacts of the proposed rate increase. BPA offered in FY 1981 and FY 1982 and is planning to offer in FY 1983 energy conservation programs through its utility customers to residential, irrigation, business, and industrial consumers. The programs would help residential consumers decrease electricity used for space and water heating, improve the use and distribution efficiencies of irrigators, and would aid commercial and industrial consumers in conserving electricity used in industrial processes, lighting, and water heating.

BPA also is implementing or plans to implement energy conservation programs for other consumers in the Pacific Northwest. These include technical assistance to State and local governments, energy conservation audits and installation of conservation measures in institutional buildings, and efficiency improvements for the transmission and distribution systems of regional utilities.

No monitoring or enforcement programs are applicable for mitigation of the adverse impacts of the proposed action and none have been adopted. However, under the terms of the Regional Act, EPA is required, among other things, to provide for the development of plans to protect and enhance fish and wildlife resources and to provide for environmental quality. BPA's proposed increase includes the cost of implementing these requirements.

Integration with Other Records

This Environmental Record of Decision has been integrated into the Record of Decision filed by the Administrator with FERC in support of BPA's proposed 1982 rate increase.

FOR FURTHER INFORMATION CONTACT: Anthony R. Morrell, Environmental Manager, Bonneville Power Administration, P.O. Box 3621–SJ, Portland, Oregon 97208; telephone (503) 230–5136.

Signed in Portland, Oregon, August 13, 1982.

Peter T. Johnson,

Administrator.

[FR Doc. 82–26280 Filed 9–23–82; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[6COX00300]

Engle Enterprises, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice of a Proposed Remedial Order which was issued to Engle Enterprises, Inc. and Robert J. Young of Englewood Cliffs, New Jersey. This Proposed Remedial Order alleges pricing violations of $69,838.00 in connection with the resale of crude oil at prices in excess of those permitted by 10 CFR Part 212, Subpart L during the period of March 1980 through December 1980.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, Attn: John W. Sturges, Director, 440 S. Houston, Room 306, Tulsa, Oklahoma 74127.

Within 15 days of publication of this notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Tulsa, Oklahoma on the 13th day of September 1982.

John W. Sturges,

Director, Tulsa Office, Economic Regulatory Administration.

[FR Doc. 82–26273 Filed 9–23–82; 8:45 am]

BILLING CODE 6450–01–M

[6COX00288]

Kimco Petroleum, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice of a Proposed Remedial Order which was issued to Kimco Petroleum, Inc. of Houston, Texas. This Proposed Remedial Order alleges pricing violations of $218,749.40 in connection with the resale of crude oil at prices in excess of those permitted by 10 CFR Part 212, Subpart L during the period July 1980 through September 1980.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, Attn: John W. Sturges, Director, 440 S. Houston, Room 306, Tulsa, Oklahoma 74127.

Within 15 days of publication of this notice any aggrieved person may file a Notice of Objection with the Office of

Hearings and Appeals, U.S. Department of Energy, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461, in accordance with the 10 CFR 205.193.

Issued in Tulsa, Oklahoma on the 13th day of September 1982.

John W. Sturges,

Director, Tulsa Office, Economic Regulatory Administration.

[FR Doc. 82-26278 Filed 9-23-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP82-523-000]

ANR Storage Co.; Application

September 20, 1982.

Take notice that on September 3, 1982, ANR Storage Company, One Woodward Avenue, Detroit, Michigan 48220 filed in Docket No. CP82-523-000 an application pursuant to Section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction, acquisition, and operation of certain facilities and the transportation and sale of natural gas and for permission and approval to abandon certain facilities and service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 13, 1982, 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 384.214 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 and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 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 it 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. 82-26282 Filed 9-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 4305-001 and 4322-001]

City of Hibbing, Minnesota and Northeastern Minnesota Municipal Power Agency; Application for Preliminary Permit

September 21, 1982.

Take notice that City of Hibbing, Minnesota and Northeastern Minnesota Municipal Power Agency (Applicants) filed on April 27, 1981, and April 30, 1981, respectively, an application for preliminary permit [pursuant to the Federal Power Act, 16, U.S.C. 791(a) 825(r)] for Projects Nos. 4305-001 and 4322-001 to be known as the Mississippi River Lock and Dam No. 5 located on the Mississippi River in Winona County, Minnesota. The applications are on file with the Commission and are available for public inspection. Correspondence with the Applicants should be directed to: Mr. Joseph A. Vumbaco, General Manager, Public Utilities Commission, City of Hibbing, 19th Street & 6th Avenue East, Hibbing, Minnesota 55746, for Project No. 4305, and Mr. Norman G. Schroeder, Chairman, Northeastern Minnesota Municipal Power Agency, Staples, Minnesota 56479, for Project No. 4322.

Project Description—The proposed projects would utilize an existing dam and lands owned by the U.S. Army Corps of Engineers. Projects Nos. 4305 and 4322 would consist of: (1) A proposed powerhouse containing two generating units having a total installed capacity of 5.8 MW; (2) a proposed 69,000-volt transmission line; and (3) appurtenant facilities. The estimated annual energy output for each project is 45,000,000 kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicants seeks issuance of a preliminary permit for a period of 36 months. During this time studies would be made to determine the engineering, economic, and environmental feasibility of the project. Consultation with Federal, state, and local government agencies would be made to determine the environmental effects of the project. The Applicants estimate that the cost of the studies would be $86,000.

Competing Applications—These applications were filed as a competing application to Mitchell Energy Company, Inc.'s application for Project No. 3652 filed on November 3, 1980. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or § 4.101 et seq. (1981), as appropriate].

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 18 CFR 385.211, 385.212, or 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before October 27, 1982.

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, Chief, Applications Branch,

Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825, North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicants specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-26283 Filed 9-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 4307-001 and 4321-001]

City of Hibbing, Minnesota and Northwestern Minnesota Municipal Power Agency; Application for Preliminary Permit

September 21, 1982.

Take notice that City of Hibbing Minnesota and Northeastern Minnesota Municipal Power Agency (Applicants) filed on April 27, 1981, and April 30, 1981, respectively, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a) 825(r)] for Projects Nos. 4307-001 and 4321-001 to be known as the Mississippi River Lock and Dam No. 5A located on the Mississippi River in Winona County, Minnesota. The applications are on file with the Commission and are available for public inspection. Correspondence with the Applicants should be directed to: Mr. Joseph A. Vumbaco, General Manager, Public Utilities Commission, City of Hibbing, 19th Street & 6th Avenue East Hibbing, Minnesota 55746, for Project No. 4307, and Mr. Norman G. Schroeder, Chairman, Northeastern Minnesota Municipal Power Agency, Staples, Minnesota 56479, for Project No. 4321.

Project Description—The proposed projects would utilize an existing dam and lands owned by the U.S. Army Corps of Engineers. Projects Nos. 4307 and 4321 would consist of: (1) A proposed powerhouse containing two generating units having a total installed capacity of 6 MW; (2) a proposed 69,000-volt transmission line; and (3) appurtenant facilities. The estimated annual energy output for each project is 30,000,000 kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Both Applicants seeks issuance of a preliminary permit for 36 months to assess the technical and economic feasability of the proposed project and consult with Federal, state, and local government agencies concerning the environmental effects of the project. The Applicants estimated the cost of the studies would be $86,000.

Competing Applications—These applications were filed as a competing application to Continental Hydro Corporation's application for Project No. 3641 filed on November 3, 1980. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

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 18 CFR 385.211, 385.212, or 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before October 27, 1982.

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, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the Applicants specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-26284 Filed 9-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP82-204-000 and CP82-204-001]

Columbia Gas Transmission Corp.; Amended Application

September 20, 1982.

Take notice that on August 20, 1982, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP82-204-001 an amended application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to The Brooklyn Union Gas Company (Brooklyn Union), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell up to 5,000,000 dekatherms (dt) equivalent of natural gas per year at a maximum rate of 30,000 dt equivalent per day on a best-efforts basis to Brooklyn Union for a period through October 31, 1986, pursuant to a limited-term gas sales agreement dated May 15, 1981. Applicant indicates that the price Brooklyn Union would pay for all gas delivered by Applicant would be the higher of Applicant's Zone 6 Rate Schedule SR rate in effect at the time of Brooklyn Union's purchase or the maximum lawful price under Section 102 of the Natural Gas Policy Act of 1978.

Applicant asserts that it would deliver the gas sold to Brooklyn Union by reducing receipts from Texas Eastern Transmission Corporation (Texas Eastern) in Texas Eastern's Zone C and/or from Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) in Tennessee's Zone 3 or at such other delivery points as may be agreed to by Applicant and Brooklyn Union. Applicant explains that it would not be necessary for Applicant to construct any facilities to accomplish the deliveries of the gas proposed for sale herein.

On July 20, 1982, the Commission issued an order setting the above-styled proceeding in Docket No. CP82-204-000 for hearing and in which it also convened a pre-hearing conference on August 5, 1982 for the purpose of having the Presiding Administrative Law Judge render a determination as to whether

Applicant's application was sufficiently adequate to enable the proceeding to proceed to formal hearing. The Presiding Administrative Law Judge pursuant to the July 20, 1982 order heard argument on this matter on August 5, 1982, and thereafter required that Applicant file an amended application by August 20, 1982 and set other procedural dates for the purpose of holding an expedited hearing as provided for in the Commission's order.

Applicant in its initial application asserted that the proposed arrangement arises out of the settlement between Applicant and Brooklyn Union, *Brooklyn Union Gas Co.* v. *Distrigas of Massachusetts Corp.*, No. 77–Civ–439 (E.D. N.Y., filed March 4, 1977). Applicant in its August 20, 1982 amended application further indicates that another reason necessitating the proposed sale to Brooklyn Union is the fact that it is incurring take-or-pay obligations of significant proportions. In its amended application, Applicant supplemented its initial filing relative to Brooklyn Union's need for this gas and the techniques that would be employed for purposes of treating the revenues resulting from the sale.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 4, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10) 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 petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–26285 Filed 9–23–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP80–547–002]

NGPL–Canyon Compression Co.; Notice of Filing of Initial FERC Gas Tariff

September 20, 1982.

Take notice that on July 30, 1982, NGPL–Canyon Compression Co. (NGPL–Canyon), 122 South Michigan Ave., Chicago, Illinois 60603, tendered for filing its initial FERC Gas Tariff, Original Volume No. 1. NGPL–Canyon stated that these tariff sheets set out the initial rates as well as all tariff components relative to the compression service authorized by order issued March 30, 1982, in Docket No. CP80–547. The tariff is on file with the Commission and open to the public inspection.

Any person desiring to be heard or to make any protest with reference to said filing should on or before September 27, 1982, 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. 82–26286 Filed 9–23–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP79–80–007]

Overthrust Pipeline Co.; Tariff Filing and Service Agreement

September 20, 1982.

Take notice that on July 30, 1982, Overthrust Pipeline Company (Overthrust), P.O. Box 11150, Salt Lake City, Utah 84147, tendered for filing its FERC Gas Tariff, Original Volume No. 1. The tariff is on file with the Commission and open to the public inspection.

Overthrust asserts that its proposed tariff sets out the terms under which shippers may receive transportation service on Overthrust's pipeline in Uinta and Sweetwater Counties, Wyoming. The tariff is proposed to be effective October 1, 1982, the scheduled date of commencement of operations for the Overthrust Segment of the Trailblazer System.

It is stated that the initial recipients of transportation service on Overthrust's pipeline are Columbia Gas Transmission Corporation, Natural Gas Pipeline Company of Amerca and Colorado Interstate Gas Company and that these companies have executed Service Agreements date July 26, 1982, which were submitted by Overthrust along with its tariff.

Any person desiring to be heard or to make any protest with reference to said filing should on or before September 27, 1982, 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. 82–26287 Filed 9–23–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP79–80–011]

Overthrust Pipeline Co.; Alternate Tariff Filing and Proposed Initial Rates

September 20, 1982.

Take notice that on August 3, 1982, Overthrust Pipeline Company (Overthrust), P.O. Box 11150, Salt Lake City, Utah 84147, tendered for filing, as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

"Alternate" Original Sheet No. 2
Original Sheet No. 6–A
Original Sheet No. 6–B (Rate Schedule PSC)

It is stated that on July 30, 1982, Overthrust submitted a tariff filing reflecting rates in compliance with Opinion No. 138. On August, 1982, Overthrust jointly filed a petition to amend the authority granted in Opinion No. 138, and Overthrust states that the petition to amend seeks to defer the implementation of Opinion No. 138-based rates until January 1, 1983, and to implement a Plant Start-up Coordination Rate for the period prior to January 1, 1983.

Overthrust states that the instant filing is submitted in the event that the Commission grants the certificate amendment requested. The tariff sheets are on file with the Commission and open to public inspection.

Overthrust asserts that Rate Schedule PSC provides for a special rate to be applicable only during the period from the operational date of the Overthrust segment until January 1, 1983, and that the rate would be volumetric in nature and designed to recover all operating

and maintenance expenses and taxes other than income taxes. It is maintained that the rate would not recover any depreciation, interest expense or return on equity. Under Overthrust's proposed Rate Schedule PSC, the project costs would continue to be treated as construction work in progress with continued capitalization of allowance for funds used during construction, it is asserted. It is indicated that the rates under Rates Schedules T and I would go into effect on January 1, 1983, rather than October 1, 1982, as originally proposed.

In its filing Overthrust requests that the Commission waive the provisions of § 154.22 of its regulations and any other of its rules and regulations as may be required to permit the submitted tariff sheets to become effective on October 1, 1982, as proposed.

Any person desiring to be heard or to make any protest with reference to said filing should on or before September 27, 1982, 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. 82-26288 Filed 9-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP79-80-006]

Trailblazer Pipeline Co. et al.; Filing of Initial FERC Gas Tariff

September 20, 1982.

In the matter of Trailblazer Pipeline Co., Overthrust Pipeline Co., Colorado Interstate Gas Co.

Take notice that on July 30, 1982, Trailblazer Pipeline Company (Trailblazer), 122 South Michigan Ave., Chicago, Illinois 60603, tendered for filing its initial FERC Gas Tariff, Original Volume No. 1. Trailblazer states that these tariff sheets set out the initial rates as well as all tariff components relative to the service authorized by Opinion No. 138 in Docket No. RP79-80. The tariff is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said filing should on or before September 27, 1982, 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. 82-26289 Filed 9-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP79-80-009]

Trailblazer Pipeline Co. et al.; Filing of Alternate Tariff Sheets

September 20, 1982.

In the matter of Trailblazer Pipeline Co., Overthrust Pipeline Co., Colorado Interstate Gas Co.

Take notice that on August 3, 1982, Trailblazer Pipeline Company (Trailblazer), 122 South Michigan Ave., Chicago, Illinois 60603, tendered for filing alternate sheets to institute the revisions to Trailblazer Gas Tariff—filed under separate cover on July 30, 1982—that are necessary to reflect the changes proposed in the Joint Petition filed concurrently to amend Opinion No. 138. The alternate sheets reflect a Plant Start-Up Coordination (PSC) Rate on Trailblazer effective for the period ending December 31, 1982, together with appropriate revisions to Rate Schedules T and I, it is asserted. The sheets are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said filing should on or before September 27, 1982, 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. 82-26290 Filed 9-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP79-80-005, et al.]

Wyoming Interstate Company Ltd.; Notice of Proposed FERC Gas Tariff and Service Agreements

September 20, 1982.

Take notice that on July 30, 1982 Wyoming Interstate Company, Ltd. (WIC), P.O. Box 1087, Colorado Springs, Colorado, 80944, tendered for filing its proposed initial FERC Gas Tariff, Original Volume No. 1 (Tariff), and service agreements with each of its four existing jurisdictional customers (shippers). Rate Schedules T and I are included in the Tariff and procedures for accommodating requests for transportation by existing and new shippers are deliniated. The Tariff and agreements are on file with the Commission and open to the public inspection.

WIC states that Rate Schedule T consists of a demand and a commodity rate, with the Demand Rate designed to recover all operating and maintenance expenses, taxes other than income taxes, the debt-related portion of depreciation, and interest expense. WIC states further, that the Commodity rate is designed to recover return on equity, depreciation expense related to equity, and income taxes. The commodity volume is 87 percent of free flow capacity and cost of service includes return on equity capital at the authorized rate of 16.8 percent, it is asserted.

WIC states that Rate Schelule I provides a means to charge shippers for deliveries in excess of their contract demand and is based on the commodity portion of Rate Schedule T plus a computed surcharge which is related to the Rate Schedule T demand charge. Rate Schedule I also provides for a credit to the shippers for any collection of excess demand charges, it is said.

It is indicated that the service agreements establish each shipper's contract demand, maximum daily transportation volumes, and points of delivery and receipt for volumes transported.

WIC asserts that the transportation service to be performed by it under the

proposed Tariff and Service Agreement was approved by the Commission in its Opinion No. 138 issued in Docket No. CP79–80, *et al.*, on March 12, 1982. Pursuant to Ordering Paragraph (E) of Opinion No. 138 and § 154.22 of the Commission's Regulations, WIC requests that the proposed Tariff and service agreements be made effective on September 28, 1982, which is the date the facilities are expected to become operational.

Any person desiring to be heard or to make any protest with reference to said filing should on or before September 27, 1982, 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. 82–26291 Filed 9–23–82 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP79–80–013 et al.]

Wyoming Interstate Company, Ltd., Alternate Tariff Filing and Proposed Initial Rates

September 21, 1982.

Take notice that on August 20, 1982, Wyoming Interstate Company, Ltd., (WIC), P.O. Box 1087, Colorado Springs, Colorado 80944, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets which include provisions for a new Rate Schedule PSC.

"Alternate" Original Sheet No. 1.
"Alternate" Original Sheet No. 5.
Original Sheet No. 5A.
Original Sheet No. 5B.
"Alternate" Original Sheet No. 6.
"Alternate" Original Sheet No. 8.

The tariff sheets are on file with the Commission and open to the public inspection.

It is stated that on July 30, 1982, WIC submitted a tariff filing reflecting rates in compliance with the Commission's Opinion No. 138 issued on March 12, 1982, in this proceeding. On August 3, 1982, WIC jointly filed a petition to amend the authority granted in Opinion No. 138 and WIC states that the petition to amend seeks to implement a Plant Start-Up Coordination (PSC) Rate for the period prior to January 1, 1983. Implementation of the PSC rate would defer the implementation of Opinion No. 138-based rates until January 1, 1982, it is asserted.

WIC states that the instant filing is submitted as a compliance filing in the event that the Commission grants the certificate amendment requested.

WIC asserts that Rate Schedule PSC provides for a special rate to be applicable only during the period from the operational date of the WIC pipeline through December 31, 1982, and that the rate would be volumetric in nature and designed to recover all operating and maintenance expenses and taxes other than income taxes. It is maintained that the rate would not recover any depreciation, interest expense or return on equity. It is asserted that under WIC's proposed Rate Schedule PSC, the project costs would continue to be treated as construction work in progress with continued capitalization of allowance for funds used during construction, and the PSC Rate revenues would be credited to construction work in progress. It is indicated that the rates under Rate Schedules T and I, as revised to reflect the implementation of Rate Schedule PSC, would be implemented on January 1, 1983, rather than September 28, 1982, as originally proposed.

In its filing WIC requested that the Commission waive the provisions of § 154.22 of its regulations and any other of its rules and regulations as may be required to permit the submitted tariff sheets to become effective on September 28, 1982, as proposed.

Any person desiring to be heard or to make any protest with reference to said filing should on or before September 27, 1982, 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. 82–26292 Filed 9–23–82; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed; Week of August 6 Through August 13, 1982

During the week of August 6 through August 13, 1982, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

September 17, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 6, 1982 Through Aug. 13, 1982]

Date	Name and location of applicant	Case No.	Type of submission
August 6, 1982	Chevron, U.S.A. San Francisco, California	HER–0033	Request for Modification/Recission. If granted: The July 19, 1982 Decision and Order (Case No. BEE–0373) issued to Ashland Oil by the Office of Hearings and Appeals would be modified regarding the amount of relief granted to Ashland Oil, Inc.
August 9, 1982	National Conference of Black Mayors, Inc., Atlanta, Georgia.	HFA–0074	Appeal of an Information Request Denial. If granted: The Information Request Denial issued by the Inspector General would be rescinded, and the National Conference of Black Mayors would receive access to certain DOE information.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Aug. 6, 1982 Through Aug. 13, 1982]

Date	Name and location of applicant	Case No.	Type of submission
August 9, 1982	Shell Oil Company, Houston, Texas	HER-0034	Request for Modification/Recission. If granted: The July 19, 1982 Decision and Order (Case No. BEE-0373) issued to Ashland Oil, Inc. by the Office of Hearings and Appeals would be modified regarding the relief granted to Ashland Oil, Inc.
August 11, 1982	Cities Service Company/Little America Refining Company, Tulsa, Oklahoma.	HEJ-0022	Protective Order. If granted: Cities Service Company would enter into a Protective Order with Little America Refining Company regarding the release of proprietary information to Cities Service Company in connection with Little America Refining Company's year end review (Case Nos. HYX-0014 and HYX-0006).
August 12, 1982	Oklahoma Refining Company, Oklahoma City, Oklahoma	HEE-0040	Exception to the Reporting Requirements. If granted: Oklahoma Refining Company would not be required to file certain DOE forms.

[FR Doc. 82-26279 Filed 9-23-82; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of August 27 Through September 3, 1982

During the week of August 27 through September 3, 1982, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 20, 1982.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—WEEK OF AUGUST 27 THROUGH SEPTEMBER 3, 1982

Date	Name and location of applicant	Case No.	Type of submission
August 30, 1982	ERA/Texaco, Inc., Dallas, Texas	HRZ-0089	Motion to Compel. If granted: An Order would be issued compelling Texaco, Inc. to make two of its employees available for depositions pursuant to the May 28, 1982 Decision and Order (Case No. HRD-0024) issued to the Office of Special Counsel.
August 31, 1982	Duncan, Allen & Mitchell, Washington, D.C	HER-0040	Request for Modification/Rescission. If granted: The August 6, 1982, Decision and Order (Case No. HFA-0073) issued to Duncan, Allen, and Mitchell by the Office of Hearings and Appeals regarding the release of certain DOE information would be rescinded.
August 31, 1982	Stanton T. Friedman, New Brunswick, Canada	HFA-0081	Appeal of an Information Request Denial. If granted: The August 4, 1982, Information Request Denial issued by the DOE Oak Ridge Operations Office would be rescinded, and Stanton T. Friedman would receive access to certain DOE information.
September 2, 1982.	Duke Heating Oil, Inc., Shamokin, Pennsylvania	HEE-0041	Exception to the Reporting Requirements. If granted: Duke Heating Oil, Inc. would not be required to file Form EIA-9A.

NOTICE OF OBJECTION RECEIVED

[Week of August 27 Through September 3, 1982]

Date	Name and location of applicant	Case No.
September 1, 1982	Phillips Petroleum Company, Bartlesville, OK	BEE-1683.

[FR Doc. 82-26277 Filed 9-23-82; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed; Week of August 16 Through August 20, 1982

During the week of August 16 through August 20, 1982, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 17, 1982.

Powerine Oil Company, Sante Fe Springs, California; HRO-0085, gasoline

On August 18, 1982, Powerine Oil Cmpany, 12354 Lakeland Road, Sante Fe Springs, CA

90670, filed a Notice of Objection to a Proposed Remedial Order which the DOE Pacific District Office of Economic Regulatory Administration (ERA) issued to the firm on July 22, 1981. In the PRO the ERA found that from August 1973 through September 1976, Powerine charged prices for gasoline and No. 2 oil which exceed the maximum allowable price levels established pursuant to 6 CFR 150.355 and 10 CFR 212.82(a) and 212.83(a)(1).

According to the PRO the Powerine violation resulted in $12,225,606 of overcharges.

[FR Doc. 82-26278 Filed 9-23-82; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of August 13 Through August 20, 1982

During the week of August 13 through August 20, 1982, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 17, 1982.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 13, 1982 through Aug. 20, 1982]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 16, 1982	Professor Gerald Holton, Boston, Massachusetts	HFA-0075	Appeal of an Information Request Denial. If granted: The July 9, 1982, Information Request Denial issued by the Department of Energy and the Department of the Army would be rescinded, and Professor Gerald Holton would receive access to the entire August 1945 transcript of conversations with German scientists.
Aug. 17, 1982	Ashland Oil, Inc., Washington, D.C.	HEZ-0086	Interlocutory Order. If granted: Ashland Oil, Inc. would receive an extension of time in which to make restitutionary payments as ordered in the July 19, 1982 Decision and Order (Case No. BEE-0373).
Aug. 18, 1982	Johnny Payton, Carson City, Nevada	HFA-0077	Appeal of an Information Request Denial. If granted: The July 16, 1982, Information Request Denial issued by the Department of the Army would be rescinded, and Johnny Payton would receive access to information concerning radiation exposure.
Aug. 18, 1982	Jones, Gungoll, Jackson, Collins & Dodd, Enid, Oklahoma	HFA-0076	Appeal of an Information Request Denial. If granted: The July 9, 1982, Information Request Denial issued by the Economic Regulatory Administration would be rescinded and Jones, Gungoll, Jackson, Collins & Dodd would receive access to certain DOE information.
Aug. 19, 1982	Kirkpatrick, Lockhart, Johnson & Hutchinson, Pittsburg, Pennsylvania.	HFA-0078	Appeal of an Information Request Denial. If granted: The July 21, 1982 Information Request Denial issued by the Office of Fuels Programs would be rescinded, and Kirkpatrick, Lockhart, Johnson & Hutchinson would receive access to information concerning the Tertiary Incentive Program.

NOTICES OF OBJECTION RECEIVED

[Week of Aug. 13 to Aug. 20 1982]

Date	Name and location of applicant	Case No.
Aug. 16, 1982	New York State Energy Office, Albany, New York	HEE-0030.
Aug. 18, 1982	Kentucky Refining & Oil Co., Betsy Lane, Kentucky	HYX-0013

REFUND APPLICATIONS RECEIVED

[Week of Aug. 14 to Aug. 21, 1982]

Date	Name of refund proceeding/name of refund applicant	Case No.
Aug. 17, 1982	Upham Oil & Gas/Odessa L.P.G. Transport Co., Inc	RF16-2.
Aug. 16, 1982	Triton Oil & Gas Corp./Cities Service Co	RF18-1.

[FR Doc. 82-26275 Filed 9-23-82; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of August 9 Through August 13, 1982

During the week of August 9 through August 13, 1982, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Petroleum Operations and Support Services, Inc., August 11, 1982, HFA-0071.

Petroleum Operations and Support Services, Inc. filed an Appeal from a denial by the Inspector General of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the Inspector General's July 15, 1982 response had correctly determined that, at the time of the FOIA request, the requested document did not exist. Accordingly, the Appeal was denied.

Remedial Orders

Claypool Hill Exxon, August 12, 1982, BRO-1544.

Claypool Hill Exxon objected to a Revised Proposed Remedial Order which the Southeastern District of the Economic Regulatory Administration (ERA) issued to the firm on November 3, 1980. In the Revised Proposed Remedial Order, the ERA found that from August 1, 1979, to June 17, 1980, (the audit period), Claypool Hill Exxon sold motor gasoline at price levels which exceeded its maximum lawful selling price calculated pursuant to 10 CFR 212.93. The DOE concluded that the Revised Proposed Remedial Order should be issued in final form. The important issues discussed in the Decision and Order include (i) the specificity

of the Revised Proposed Remedial Order, (ii) the constitutionality of § 205.196(b) of the DOE regulations, (iii) whether this Remedial Order proceeding is part of a criminal investigation, and (iv) whether Claypool Hill Exxon had already refunded overcharges through a reduction in prices.

Barry Ivers d.b.a. Barry Ivers Chevron Service, August 11, 1982, BRO–1496.

Barry Ivers d.b.a. Barry Ivers Chevron Service objected to a Proposed Remedial Order (PRO) issued to it by the DOE Economic Regulatory Administration. In the PRO, the DOE found that Ivers had charged prices for motor gasoline which exceed its maximum lawful selling prices calculated pursuant to 10 CFR 212.93. After considering Ivers' objections, the DOE determined that the PRO should be issued as a final Remedial Order. The important issues considered in the Decision and Order included (i) the validity of the amendments to the retailer price rule adopted in July 1979; (ii) whether or not a retailer may add his costs of installing vapor recovery equipment to his maximum lawful selling price; (iii) and the petitioner's burden of going forward with the evidence once the DOE has established a *prima facie* case.

Southern Terminal & Transport Company, August 11, 1982, HRO–0042, HRH–0063, HRD–0063.

Mr. W. Guy McKenzie, Sr., former president of Southern Terminal & Transport Company (ST&T) filed a Statement of Objections, Motion for Discovery and Motion for Evidentiary Hearing in response to a Proposed Remedial Order which the DOE Southeast District Office of Enforcement issued to the firm on March 17, 1982. In his statement, Mr. McKenzie argued that he and ST&T were not liable for the PRO's allegations of overcharges by three resellers of fuel oil. In response, the Office of Enforcement sought to withdraw the PRO without prejudice. In reply, Mr. McKenzie requested that the PRO be dismissed with prejudice to future enforcement actions against ST&T and himself. The DOE concluded that fundamental defects in the PRO required that it be dismissed and that the related objection proceeding be terminated. Based upon statements made by the Office of Enforcement in support of its motion to withdraw the PRO, the DOE dismissed the PRO with prejudice with respect to allegations of overcharges by the Baker Service Company. In all other respects, the PRO was dismissed without prejudice.

St. Louis Fuel and Supply Company, August 12, 1982, DRO–0159.

St. Louis Fuel and Supply Company objected to a Proposed Remedial Order which Region VII of the ERA Office of Enforcement issued to the firm on November 15, 1978. In the Proposed Remedial Order, the Office of Enforcement found that St. Louis Fuel had charged prices in sales of No. 2 diesel fuel that were in excess of its maximum legal selling prices calculated in accordance with the Mandatory Petroleum Price Regulations. The findings in the PRO were largely based on the Office of Enforcement's determination that the firm should be audited on a single firm-wide inventory basis. St. Louis Fuel claimed that it was entitled to employ separate inventory accounting methods for its stocks of Mobil and Texaco fuels, which it sold from separate barges. After consideration of St. Louis Fuel's arguments, the DOE found that the Proposed Remedial Order should be issued as a final order, since the firm had failed adequately to show that it had consistently and historically used separate inventory accounting for purposes of pricing and cost management throughout the entire relevant period from May 15, 1973 to the end of its audit period, April 30, 1974.

Request for Exception

Mt. Airy Refining Company, August 13, 1982, DEE–1496.

Mt. Airy Refining Company filed an Application for Exception from the provisions of 10 CFR 212.94, as modified by Special Rule No. 2, 44 FR 93972 (1979), in which the firm sought relief from its crude oil pricing obligations under the Buy-Sell Entitlements Programs. In considering Mt. Airy's request, the DOE found that the firm had failed to establish that it would experience a serious hardship in the absence of exception relief. Accordingly, exception relief was denied.

Dismissals

The following submissions were dismissed without prejudice:

Company name	Case No.
Equipment, Inc	BRO–1463; HRD–0016.
Rettinger Bros. Oil Co	HEE–0034.
L. O. Ward	BRO–1235; BRH–1235; BRD–1235.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th and Pennsylvania Ave., NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management; Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 17, 1982.

[FR Doc. 82–26274 Filed 9–23–82; 8:45 am]

BILLING CODE 6450–01–M

Southeastern Power Administration

Order Confirming and Approving Power Rates on an Interim basis

AGENCY: Southeastern Power Administration (SEPA), DOE.

ACTION: Notice of approval on an interim basis of Kerr-Philpott projects' rates

SUMMARY: On September 2, 1982, the Assistant Secretary for Conservation and Renewable Energy confirmed and approved, on an interim basis, the extension of two existing Rate Schedules, KP–1–B and KP–2–B, and a third replacement Rate Schedule JHK–1–D, for Kerr-Philpott Projects' power. The rates were approved on an interim basis through March 31, 1983, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

DATE: Approval of rates on an interim basis is effective on October 1, 1982.

FOR FURTHER INFORMATION CONTACT:

Leon Jourolmon, Jr., Chief, Division of Fiscal Operations, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635

John J. DiNucci, Office of Power Marketing Coordination, Department of Energy, 12th Street and Pennsylvania Avenue, NW., Washington, D.C. 20461

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by Order issued March 19, 1982, in Docket No. EF81–3041 confirmed and approved Wholesale Power Rate Schedules KP–1–B, KP–2–B, and JHK–1–C applicable to Kerr-Philpott Projects' power for a period ending September 30, 1982. Rate Schedules KP–1–B, and KP–2–B have been extended and JHK–1–D replaces JHK–1–C.

Issued in Washington, D.C., September 2, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

September 2, 1982.

In the Matter of Southeastern Power Administration—Kerr-Philpott Projects' Power Rates; Rate Order No. SEPA–14; Order Confirming and Approving Power Rates on an Interim Basis.

Pursuant to sections 302(a) and 301(b) of the Department of Energy Organization Act, Pub. L. 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (SEPA) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–33, effective January 1, 1979, 43 FR 60636 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy

Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. Due to a Department of Energy organizational realignment, Delegation Order No. 0204–33 was amended, effective March 19, 1981, to transfer the authority of the Assistant Secretary for Resource Applications to the Assistant Secretary for Conservation and Renewable Energy. This rate order is issued pursuant to the delegation to the Assistant Secretary for Conservation and Renewable Energy.

Background

Power from the Kerr-Philpott Projects is presently sold under Wholesale Power Rate Schedules KP–1–B, KP–2–B, and JHK–1–C, confirmed and approved through September 30, 1982. SEPA recently issued a new Interim Power Policy for the Kerr-Philpott Projects and represents that it is presently negotiating on an expedited schedule with all affected parties to implement the policy prior to March 31, 1983. To allow time to complete nogotiations under the interim policy, and present revised rate schedules, SEPA has requested that I approve for six additional months extension of two of the currently effective rate schedules and an adjustment to the third rate schedule. Issuance of the interim policy became necessary when SEPA's originally proposed long-term policy ran into insurmountable problems requiring the issuance of a revised proposed long-term policy and the receipt of extensive additional public input.

Public Notice and Comment

Opportunities for public review and comments on the extension of two existing rate schedules and the proposed adjustment of the remaining rate schedule were announced by Notice published in the **Federal Register** on June 22, 1982, 47 FR 26908, and all affected customers were additionally notified by mail. Written comments were invited by the Notice through July 26, 1982. No comments were received.

Discussion

System Repayment

SEPA's Power Repayment Study, prepared in June 1982, for the Kerr-Philpott Projects, shows that the rate schedules proposed for the six-month extension will not produce revenues on a long-term basis sufficient to meet repayment criteria. However, because the shortfall is very moderate and of definite short duration, and because SEPA is engaged in a definite course of action to extricate itself from difficult and complex policy problems, the proposal to extend two of the existing rate schedules and to modify the third to pass on additional wheeling charges applicable to the Carolina Power & Light Company area appears, under the circumstances, to be reasonable and justifiable. Furthermore, SEPA's representation that it will develop and present rate schedules during the requested extension period which will produce revenue adequate to recover on a timely basis all project power costs appears realizable and will be accepted.

Rate Design

Because the rates are expected to be in effect for only a six-month period, Rate Schedules KP–1–B and KP–2–B are proposed for extension and the added wheeling charge from CP&L is being passed directly through to the affected customers. Rate Schedule JHK–1–D is identical to JHK–1–C currently in effect except that the monthly wheeling charge has been increased from $0.56 per kilowatt of contract demand to $0.72 to cover the additional cost.

Environmental Impact

SEPA has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded with Departmental concurrence that, because the increased rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates including studies, and other supporting materials are available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635, and in the Office of the Director of Power Marketing Coordination, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461.

Submission to the Federal Energy Regulatory Commission

The rates herein confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period ending no later than March 31, 1983.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 1982, attached Wholesale Power Rate Schedules KP–1–B, KP–2–B, and JHK–1–D. The rate schedules shall remain in effect on an interim basis through March 31, 1983, unless such period is extended or until the FERC confirms and approves them or substitute rate schedules on a final basis.

Issued at Washington, D.C., this 2nd day of September 1982.

Joseph J. Tribble,

Assistant Secretary of Conservation and Renewable Energy.

Wholesale Firm Power Rate Schedule KP–1–B

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of which is hereinafter called the Customer) within a 150 mile radius of the John H. Kerr Project, purchasing power generated at the John H. Kerr and Philpott Projects in wholesale quantities under appropriate contracts and served through the facilities of the Virginia Electric and Power Company (hereinafter called the Company).

Applicability

This rate schedule shall be applicable to firm power and accompanying energy generated at the John H. Kerr and Philpott Projects and to deficiency energy purchased by the Government from the Company, purchased in wholesale quantities under appropriate contracts for a specified number of kilowatts of capacity and shall be applied to each Customer's system consisting of one or more delivery points.

Character of Service

The electric capacity and energy supplied hereunder will be 3-phase alternating current at a nominal frequency of 60 Hertz. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge

$1.25 per kilowatt of contract demand.

Energy Charge

5.00 mills per kilowatt–hour.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a total amount annually of 5,000 kilowatt-hours per kilowatt of contract demand prorated on an equal daily amount throughout the year. The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Purchaser shall at its own expense provide, install and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Service Interruption

When energy delivery to the Customer's system is reduced or interrupted for 1 hour or longer, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced.

July 1, 1975.

Availability

This rate schedule shall be available to the Carolina Power and Light Company and the Virginia Electric and Power Company (either one of which is hereinafter called the Company).

Applicability

This rate schedule shall be applicable to electric capacity and energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Company.

Character of Service

Electric capacity and energy delivered to the Company will be 3-phase alternating current at a nominal frequency of 60 Hertz delivered at points of delivery specified by appropriate contract.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge

$1.25 per kilowatt per month for dependable capacity made available to the Company for their own use.

Energy Charge

An amount for dump energy equal to eighty percent (80%) of the calculated saving in the cost of fuel for the Company's operating generating units due to the generation avoided therein by the delivery of such dump energy; provided, that the procedures to determine saving in the cost of fuel will be agreed upon from time to time by the Government and the Company.

Billing Month

End-of-month meter readings shall be made at 12:00 midnight at the end of the calendar month where meters are located in continously attended power plants and substations.

Service Interruptions

When the dependable capacity available to the Company is reduced or interrupted for 1 hour or longer during on-peak hours and such reduction or interruption is not due to conditions on the Company's system, or in the case of Philpott, the Appalachian Power Company's or the Company's system, or agreed to outages, the dependable capacity to be paid for by the Company for that month shall be reduced for billing purposes for each on-peak hour (the nearest number of whole hours) that dependable capacity available to the Company is reduced or interrupted by an amount equal to one/(number of on-peak hours in the month) times such reduction in kilowatts of dependable capacity. In the event such reduction in dependable capacity to be paid for by the Company should be greater than the dependable capacity sold to the Company in any month, any such excess shall be applied to the dependable capacity sold to the Company in subsequent months. If such reduction or interruption results in a total delivery of energy in that month to or for the account of the Company's system by the Government amounting to less than the total declared available, the declaration of energy for that month shall be reduced for accounting purposes to the amount actually delivered. On-peak hours shall be the hours between 8:00 a.m. and 10:00 p.m. on all days except Sunday.

Power Factor

The Company shall take power and energy from the Government at such power factor as will best serve the Company's system from time to time; provided, that the Company shall not impose a power factor of less than .85 lagging on the Government's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities or unreasonably interferes with the delivery of power and energy by the Government to its other customers.

Termination of Contract

The Company shall pay the Government 5.00 mills per kilowatt-hour for energy remaining in the energy bank and for energy remaining as a net debit balance in the storage account at the termination of the contract between the Government and the Company.

July 1, 1975.

Wholesale Firm Power Rate Schedule JHK–1–D

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of which is hereinafter called the Customer) within a 165 mile radius of the existing interconnection point between the Virginia Electric and Power Company and the Carolina Power and Light Company (hereinafter called the Company) at the Virginia-North Carolina State line in the vicinity of John H. Kerr Project (hereinafter called the Project), purchasing power from the Project in wholesale quantities under appropriate contracts and served through the facilities of the Company.

Applicability

This rate schedule shall be applicable to Project firm power and accompanying energy, purchased in wholesale quantities under appropriate contracts for a specified number of kilowatts of capacity and shall be applied to each Customer's system consisting of one or more delivery points.

Character of Service

Electric capacity and energy supplied hereunder will be 3-phase alternating current at a nominal frequency of 60

Hertz delivered at existing or future delivery points on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge

$1.25 per kilowatt of contract demand.

Energy Charge

5.00 mills per kilowatt-hour.

An additional rate for wheeling service provided under this rate schedule shall be:

Wheeling Charge

$0.72 per kilowatt of contract demand.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

(a) If the Customer does not own or operate generating facilities (other than mobile generating equipment used for emergency purposes), the Government will supply Project energy to such Customer each month, to the extent that such energy is available, based on the ratio of the Customer's energy requirements (determined by multiplying the Customer's total energy requirements at all points of delivery located within 165 miles of the existing interconnection point between the Company and VEPCO at the Virginia-North Carolina State line in the vicinity of the Project by the ratio of the Customer's contract demand to its maximum 30-minute integrated measured demand for that month at said points of delivery) to the sum of the individual energy requirements of all such Customers purchasing under this rate schedule determined on this same basis. (The maximum 30-minute integrated measured demand of the Customer for the month shall be determined by adding together the highest 30-minute integrated measured demand at each point of delivery located within 165 miles of the aforementioned interconnection point, exclusive of abnormal nonrecurring demands resulting from transfer of loads from one point of delivery to another where such transfers are previously approved by the Company.)

(b) If the Customer owns or operates generating facilities (other than mobile generating equipment used for emergency purposes), the Government will supply Project energy each month in an amount determined by multiplying the ratio of the Customer's contract demand to the dependable capacity made available to the Company's system from the Project by 100/106 of the total energy (exclusive of dump energy) declared and made available to the Company's system from the Project.

Energy Accounting

For the purposes of energy accounting an energy bank shall be maintained, and the Government shall keep the official record of such account. In any month in which the total Project energy (exclusive of dump energy) declared and made available by the Government to the Company exceeds the energy accounted for in such month as accompanying the capacity required to meet the contract demands of the Government to preference customers, increased by six percent (6%) to provide for losses in transmission, such remaining energy shall be credited to the energy bank. Energy stored in this energy bank shall be used in subsequent months to supply to the extent possible preference customer energy requirements not supplied by energy declared and made available from the Project during such months. Withdrawals of energy from the energy bank shall reduce the bank account and shall be accounted for as Proejct energy available to be transmitted by the Company to the preference customers for the account of the Government.

In those months when Project energy (including energy available from the energy bank) multiplied by 100/106 is equal to or more than the total energy requirements of preference customers of the Government, all such energy requirements shall be deemed to have been supplied from the Project and transmitted by the Company for the account of the Government. In those months when Project energy (including energy available from the energy bank) multiplied by 100/106 is less than the total energy requirements of preference customers of the Government, the quantity of energy which shall be deemed to have been transmitted by the Company for the account of the Government shall be 100/106 of the total Project and bank energy available for transmission. In such months each preference customer of the Government that owns or operates generating facilities (other than mobile generating equipment used for emergency purposes) shall receive a portion of the available energy that results from multiplying the ratio of each such Customer's contract demand to the dependable capacity made available to the Company's system by 100/106 of the total energy declared and made available to the Company's system (excluding energy available from the energy bank), and each of the other preference customers of the Government shall receive a proportionate part of the remaining available energy based on the ratio of such Customer's individual energy requirements (determined by multiplying each such Customer's total energy requirements at all points of delivery by the ratio of its contract demand to its maximum 30-minute integrated measured demand for the month at said points of delivery) to the sum of the individual energy requirements of all such preference customers determined on this same basis.

Billing Month

End-of-month meter readings for billing under this schedule shall be made on the last regular working day of each month or as near thereto as may be practicable.

Conditions of Service

(a) *Parallel Operation:* The Government may condition service to the Customer upon payment by the Customer to the Company of the cost of such facilities, including special meters, as are made necessary by the Customer's operation of any generating facilities in parallel with the Company's system and in such event will require the operation and maintenance of such facilities by the Customer in accordance with good operating practices.

(b) *Energy Scheduling:* If the Customer owns or operates generating facilities (other than mobile generating equipment used for emergency purposes), it shall schedule and receive its proportionate share of the minimum monthly declarations of energy as provided in the contract between the Government and the Company dated March 30, 1973, in quantities reasonably distributed over the period of declaration. In the event energy in addition to minimum is available at the Project, the Customer shall receive its proportionate share of any excess energy so declared during the period for which it is declared.

(c) *Service interruption:* When energy delivery to the Customer's system is reduced or interrupted for 1 hour or longer, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced.

(d) *Power Factor:* If the Customer owns or operates generating facilities (other than mobile generating equipment used for emergency purposes), the Customer will so utilize its generating units and power factor corrective equipment as to minimize its reactive requirements; provided, however, that unless otherwise specifically agreed, the Government will not be obligated to make available for delivery power and energy to the Customer at any time at a power factor below .85 lagging.

October 1, 1981.

[FR Doc. 82-26341 Filed 9-23-82; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-7-FRL 2213-3]

Approvals of PSD Permits to Meredith Corp. et al.

In the matter of Meredith Corp., Des Moines, Iowa; City of Beloit, Beloit, Kansas; Mallinckrodt, Inc., St. Louis, Missouri; Empire District Electric Co., La Russell, Missouri; ORTHO/Chevron Chemical Co., Fort Madison, Iowa.

Notice is hereby given that the Environmental Protection Agency (EPA) has issued construction permits under the Prevention of Significant Air Quality Deterioration (PSD) regulations (40 CFR 52.21) to: Meredith Corporation; City of Beloit; and Mallinckrodt, Inc. Notice is also given that EPA approved a change in permits previously issued to: Empire District Electric Company; and ORTHO/Chevron Chemical Company.

On April 15, 1982, the EPA formally approved, with conditions, a proposal by the Meredith Corporation of Des Moines, Iowa, to construct a rotogravure printing press at the company's Des Moines printing plant. The proposed project qualified as a major modification of an existing major stationary source due to a significant increase in emissions of volatile organic compounds (VOC).

On May 26, 1982, the EPA formally approved with conditions, a proposal by the City of Beloit to install one 6000 kilowatt dual fuel engine generator at the Beloit, Kansas, municipal generating plant. The engine addition qualified as a major modification of an existing major stationary source due to a significant increase in nitrogen oxides (NO_x), carbon monoxide (CO), and sulfur dioxide (SO_2) emissions.

On June 17, 1982, the EPA formally approved, with conditions, a porposal by Mallinckrodt, Inc., to install a 115.1 million Btu's per hour coal-fired boiler at its chemical plant in St. Louis, Missouri. The proposed project qualified as a major modification of an existing major stationary source due to a significant increase in emissions of SO_2 and NO_x.

On March 25, 1982, the EPA formally approved revisions to a PSD permit condition that was issued to Empire District Electric Company of La Russell, Missouri, on January 7, 1981. The permit modifications corrected an erroneously specified reference condition and added an equivalent CO concentration (parts per million by volume) emission limit. The changes will have no substantial impact in emissions or on air quality.

On March 25, 1982, the EPA formally approved a requested change to a PSD permit issued to the ORTHO/Chevron Chemical Company of Fort Madison, Iowa, on August 15, 1979. The revision adjusted an emission limit upwards to be more representative of variations in emissions over time and also established an additional permit condition which required an increase in the height of a stack. The revisions will have no substantial impact in emissions or on air quality.

Under Section 307(b)(1) of the Clean Air Act, as amended in August 1977, judicial review of any of these determinations is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2), the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

A petition for review for any of the above must be filed with the appropriate court on or before November 23, 1982.

Copies of these permits and related information are available for public inspection at: U.S. Environmental Protection Agency, Air and Waste Management Division, Air Branch, 324 East 11th Street, Kansas City, Missouri 64106.

Dated: September 8, 1982.

William W. Rice,

Acting Regional Administrator.

[FR Doc. 82-26329 Filed 9-23-82; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-59097D; TSH FRL 2214-3]

Benzoic Acid Ester; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA received an application for a test marketing exemption (TM-82-37) under section 5 of the Toxic Substances Control Act (TSCA) on August 4, 1982. Notice of receipt of the application was published in the Federal Register of August 13, 1982 (47 FR 35331). EPA has granted the exemption.

EFFECTIVE DATE: September 15, 1982.

FOR FURTHER INFORMATION CONTACT: Rose Allison, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, D.C. 20460 (202-382-3738).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) any and applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions," contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirements of section 5(a) or section 5(b), and to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of this disposition in the Federal Register. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On August 4, 1982, EPA received an application for an exemption from the requirements of sections 5(a) and 5(b) of TSCA to manufacture a new chemical substance for test marketing purposes. The application was assigned test marketing exemption number TM-82-37. The submission is for benzoic acid ester. The submitter claimed its identity, the specific chemical identity, specific use, production volume, and industrial sites as confidential business information. The TME substance will be test marketed for a period not to exceed 4

months. During manufacture, six workers may be exposed for 2 hours/day for 2 days.

A notice published in the Federal Register of August 13, 1982 (47 FR 35331) announced receipt of this application and requested comment on the appropriateness of granting the exemption. The Agency did not receive any comments concerning the application.

EPA has established that the test marketing of the new chemical substance submitted under TM-82-37, will not present any unreasonable risk of injury to health or the environment under the specific conditions set out in the application. The Agency did not identify any significant health or ecological concern for the TME substance. Bioconcentration could occur if significant quantities of the TME substance were released. However, the Agency does not expect this to occur.

This test marketing exemption is granted based on the facts and information obtained and reviewed, but is subject to all conditions set out in the exemption application and, in particular, those enumerated below.

1. This exemption is granted solely to this manufacturer.

2. The applicant must maintain records of the date(s) of shipment(s) to the customers specified in the application, and the quantities shipped in each shipment, and must make these records available to EPA upon request.

3. Each bill of lading that accompanies a shipment of the substance during the test marketing period must state that the use of the substance is restricted to that described to EPA in the test marketing exemption application.

4. The production volume of the new substance may not exceed the quantity described in the test marketing exemption application.

5. The test marketing activity approved in this notice is limited to a 4-month period commencing on the date of signature of this notice by the Director of the Office of Toxic Substances.

6. The number of workers exposed to the new chemical should not exceed that specified in the application, and the exposure levels and duration of exposure should not exceed those specified in the application.

The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which casts significant doubt on the Agency's conclusion that the test marketing of this substance under the conditions specified in the application will not present an unreasonable risk of injury to human health or the environment.

Dated: September 15, 1982.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 82-26321 Filed 9-23-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59101; TSH FRL 2214-6]

Certain Chemicals; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the Federal Register of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of three applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: October 12, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-59101]" and the specific TME number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E-401, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW, Washington, DC 20460.

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

TME 82-48

Close of Review Period. October 19, 1982.

Manufacturer. Confidential.

Chemical. (G) Modified polyurethane.

Use/Production. (S) Binder for electron beam-curable coatings. Prod. range: 8 mos.-500 gals. max.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation, a total of 20 workers, up to 4 hrs/da, up to 10 da/yr. Use: A total of 5 workers, up to 8 hrs/da.

Environmental Release/Disposal. No release. Disposal by Resource Conservation Recovery Act (RCRA)—licensed waste handler.

TME 82-49

Close of Review Period. October 29, 1982.

Manufacturer. Confidential.

Chemical. (G) Modified polyurethane.

Use/Production. (S) Binder for electron beam-curable coatings. Prod. range: 8 mos.-500 gals. max.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: Dermal and inhalation, a total of 14 workers, up to 4 hrs/da, up to 7 da/yr.

Environmental Release/Disposal. No release. Disposal by RCRA.

TME 82-50

Close of Review Period. October 29, 1982.

Manufacturer. Texaco Chemical Company.

Chemical. (G) Substituted polyethyleneamine polyisobutenyl succinimide.

Use/Production. (S) Lubricant additive. Prod. range: Confidential.

Toxicity Data. Acute oral: >10g/kg; Acute dermal: >8g/kg; Skin irritation: 1.5/8.0; Eye irritation: 0.67/110.

Exposure. Manufacture: Dermal and inhalation, a total of 1 worker, up to 1.5 hrs/da, up to 300 da/yr. Processing: Dermal and inhalation, 2 workers at each site, up to .2 hr/da, up to 52 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air, water and land at each site. Disposal by landfill and privately owned treatment works.

Dated: September 17, 1982.

Denise F. Swink,

Acting Director, Management Support Division.

[FR Doc. 82-26319 Filed 9-23-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51432; TSH FRL 2214-7]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the Federal Register of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of seventeen PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 82–658—December 8, 1982.

PMN 82–659, 82–660, 82–661, 82–662, 82–663, 82–664 and 82–665—December 11, 1982.

PMN 82–666, 82–667 and 82–668—December 12, 1982.

PMN 82–669 and 82–670—December 13, 1982.

PMN 82–671, 82–672, 82–673 and 82–674—December 14, 1982.

Written comments by:

PMN 82–658—November 8, 1982.

PMN 82–659, 82–660, 82–661, 82–662, 82–663, 82–664 and 82–665—November 11, 1982.

PMN 82–666, 82–667 and 82–668—November 12, 1982.

PMN 82–669 and 82–670—November 13, 1982.

PMN 82–671, 82–672, 82–673 and 82–674—November 14, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS–51432]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M St., SW., Washington, D.C. 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: David Dull, Chief, Notice Review Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M St., SW., Washington, D.C. 20460, (202–382–3729).

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

PMN 82–658

Importer. Confidential.

Chemical. (G) Substituted pyrazine salt.

Use/Import. (G) Minor component of a commercial formulation. Import range: 200–400 kg/yr.

Toxicity Data. Acute oral: 500 mg/kg; Acute dermal: >1,000 mg/kg; Skin irritation: Strong irritant; Eye irritation: Strong irritant; Skin sensitization: Low potential.

Exposure. Use: Dermal, a total of 500 workers, minimal exposure.

Environmental Release/Disposal. Minimal release to land. Disposal by incineration and approved landfill.

PMN 82–659

Manufacturer. Ashland Chemical Company.

Chemical. (G) Substituted succinic anhydride.

Use/Production. (S) Captive intermediate. Prod. range: 130,000–285,000 lbs/yr.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 82–660

Manufacturer. Ashland Chemical Company.

Chemical. (G) Polycarboxylic anhydride polymer.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 82–661

Manufacturer. Confidential.

Chemical. (G) Modified polyurethane.

Use/Production. (S) Binder for electron beam-curable coatings. Prod. range: 5,000–30,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: Dermal and inhalation, a total of 35 workers, up to 8 hrs/da.

Environmental Release/Disposal. No release. Disposal by approved landfill.

PMN 82–662

Manufacturer. Confidential.

Chemical. (G) Modified polyurethane.

Use/Production. (S) Binder for electron beam-curable coatings. Prod. range: 5,000–30,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation, a total of 19 workers, up to 8 hrs/da.

Environmental Release/Disposal. No release. Disposal by approved landfill.

PMN 82–663

Manufacturer. Confidential.

Chemical. (G) Modified diol.

Use/Production. (S) Site-limited intermediate for production of modified polyurethanes. Prod. range: 500–3,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: Dermal and inhalation, a total of 24 workers, up to 3 hrs/da.

Environmental Release/Disposal. No release. Disposal by approved landfill.

PMN 82–664

Manufacturer. Confidential.

Chemical. (G) 4-hydroxy-N-substituted-3-nitrobenzenesulfonamide.

Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: Dermal, a total of 4 workers, up to 3 hrs/da, up 5 da/yr.

Environmental Release/Disposal. Confidential.

PMN 82–665

Manufacturer. Confidential.

Chemical. (G) 3-amino-4-hydroxy-N-substituted benzenesulfonamide.

Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: Dermal, a total of 4 workers, up to 3 hrs/da, up to 4 da/yr.

Environmental Release/Disposal. Confidential.

PMN 82–666

Manufacturer. Werner G. Smith, Inc.

Chemical. (S) Oleic, linoleic and palmitic acid ester of ethoxylated C_{12}–C_{18} alcohols.

Use/Production. (S) Non ionic emulsifier for metal working lubricants. Prod. range: 400,000–600,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 4 workers, up to 12 hrs/da, up to 72 da/yr.

Environmental Release/Disposal. No release. Disposal by publicly owned treatment works (POTW).

PMN 82–667

Importer. Naarden International.

Chemical. (G) Cyclic aldehyde.

Use/Import. (S) Used in fragrance compounds. Import range: Confidential.

Toxicity Data. Skin sensitization: Negative.

Exposure. Processing: inhalation, a total of 24 workers.

Environmental Release/Disposal. No release. Disposal by incineration.

PMN 82–668

Importer. Sherex Chemical Company, Inc.

Chemical. (S) Poly(oxy-1,2-ethanediyl) alpha-C_{12}-C_{18} alkyloxy-omega methoxy.

Use/Import. (S) Industrial and commercial surfactant textile aid and cleaning agent. Import range: 200,000–600,000 lbs/yr.

Toxicity Data. Acute oral: 5.2 g/kg; Eye irritation: 11.33, 8.83, 11.83, 10.67 @24, 48, 72 hrs. and 7 days.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

PMN 82–669

Manufacturer. Ashland Chemical Company.

Chemical. (G) Unsaturated polyester with halogenated glycol.

Use/Production. (S) Reinforced thermosetting plastic for industrial articles. Prod. range: 40,000–500,000 lbs/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: An unknown number of workers, up to 2 hrs/da.

Environmental Release/Disposal. Disposal by incineration and landfill.

PMN 82–670

Manufacturer. Confidential.

Chemical. (G) Oxirane polymer of isocyanic acid ester.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. Skin irritation: Slight irritant; Eye irritation: Minimal irritant.

Exposure. Manufacture and use: Dermal and inhalation.

Environmental Release/Disposal. Confidential. Disposal by certified waste disposal service.

PMN 82–671

Manufacturer. Confidential.

Chemical. (G) Vinyl chloride-ethylene copolymer.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 60 workers, up to 8 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. No release. Disposal by approved landfill.

PMN 82–672

Manufacturer. Texaco Chemical Company.

Chemical. (G) Substituted polyethyleneamine. polyisobutenylsuccinimide.

Use/Production. (S) Lubricant additive. Prod. range: Confidential.

Toxicity Data. Acute oral: >10 g/kg; Acute dermal: >8 g/kg; Skin irritation: 0.83/8.0; Eye irritation: 2.33/110.

Exposure. Manufacture and processing: Dermal and inhalation, a total of 17 workers, up to 1.5 hrs/da, up to 300 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air, water and land. Disposal by biological treatment system, and approved landfill.

PMN 82–673

Manufacturer. Texaco Chemicals Company.

Chemical. (G) Substituted polyethyleneamine polyisobutenylsuccinimide.

Use/Production. (S) Industrial, commercial and consumer lubricant additive. Prod. range: Confidential.

Toxicity Data. Acute oral: >g/kg; Acute dermal: >8 g/kg; Skin irritation: 1.50/8.0; Eye irritation: 0.67/110.

Exposure. Manufacture, processing, use and disposal: Dermal and inhalation, a total of 17 workers, up to 1.5 hrs/da, up to 300 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air, water and land. Disposal by biological treatment system, and approved landfill.

PMN 82–674

Importer. Interox America.

Chemical. (S) Hexa-aquomagnesium (II) bis(2-carboxylatomonoperoxy-benzoic acid).

Use/Production. (S) Bleaching agent. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >200 mg/kg; Skin irritation: Severe; Eye irritation: Positive; Inhalation: 1.72 mg/1; Skin sensitization: Sensitizer.

Exposure. Manufacture, processing, and use: Dermal, inhalation.

Environmental Release/Disposal. Release minimal. Disposal by incineration and approved landfill.

Dated: September 17, 1982.

Denise F. Swink,

Acting Director, Management Support Division.

[FR Doc. 82-26320 Filed 9-23-82; 8:45 am]

BILLING CODE 6560-50-M

[W-9-FRC 2213-2]

Groundwater System of the Upper Santa Cruz Basin and the Avra-Altar Basin of Pima, Pinal, and Santa Cruz Counties, Arizona; Request for EPA Determination Regarding Aquifer System.

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and public hearing.

SUMMARY: The Environmental Protection Agency announced the receipt of a petition requesting the designation of the groundwater system of the upper Santa Cruz and Avra-Altar Basins as a sole or principal source of drinking water in the November 18, 1981, Federal Register. EPA has prepared a Support Document summarizing the available information regarding the aquifers, and proposes to make the requested determination. The purpose of this notice is to announce that the Support Document is available for review, to request public comments, and to provide information regarding a public hearing on this matter.

DATES: The public hearing will be held on Thursday, December 9, 1982. A morning session will begin at 9:30 a.m. and an evening sesson will begin at 7:30 p.m. The public is also encouraged to sumit written comments which must be received before the close of business on December 17, 1982 at the EPA Regional Office in San Francisco.

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. The public hearing will be held at the Pima County Board of Supervisors Hearing Room, Courts Building, First Floor, 111 West Congress Street, Tucson.

FOR FURTHER INFORMATION CONTACT: George Wilson, Project Officer, at the above address, or telephone (415) 974–8345. Copies of the petition and aquifer study are available upon request.

SUPPLEMENTARY INFORMATION: Section 1424(e) of the Safe Drinking Water Act (Pub. L. 93–523) authorizes the Administrator of the Environmental Protection Agency (EPA) to determine that an area has an aquifer which is the sole or principal drinking water source for the area. On November 18, 1981, EPA announced in the Federal Register that the Southwest Environmental Service, Tucson, Arizona, had requested the Administrator to determine that the Upper Santa Cruz and Avra-Altar aquifers are the sole or principal drinking water source for south-central Arizona. The petitioned area includes the eastern portion of Pima County, Santa Cruz county, and a portion of southeast Pinal County. Major metropolitan centers in the area include Tucson and Nogales. Information is solicited about the petitioned area's hydrogeologic system including the surface boundary of its recharge area and about the number and kinds of small entities (businesses, governmental jurisdictions, and organizations) receiving Federal financial assistance in the area. This will assist EPA in evaluating the aquifer system and the potential impact of a designation on

small entities pursuant to Regulatory Flexibility Act requirements. Based on EPA experience with other sole source designations, some Federal financially assisted projects that potentially may be affected include highway construction, subdivision construction, and waste disposal sites. EPA has prepared a Support Document on the aquifers and proposes to grant the requested sole source aquifer designation based on the Support Document and public comments received in response to the November 18, 1981 notice. A public hearing will be held on December 9, 1982. Any interested persons unable to attend the public hearing are invited to send their written comments to Environmental Protection Agency, Region 9, Water Management Division, Attn: Arizona, Hawaii, Nevada Branch (W-4), 215 Fremont Street, San Francisco, CA 94105. If received on or before December 17, 1982, these comments will be included in the public record.

Persons who wish to present prepared statements at the public hearing are urged to given notice to George Wilson, Arizona/Hawaii/Nevada Branch (W-4), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8345, prior to the hearing. If possible, written copies of these statements should be submitted at the hearing for inclusion in the record.

Dated: August 26, 1982.

Sonia F. Crow,

Regional Administrator.

[FR Doc. 82-26328 Filed 9-23-82; 8:45 am]

BILLING CODE 6560-50-M

[A-9-FRL 2213-5]

Issuance of PSD Permit To Guardian Industries

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice of Approval of Prevention of Significant Air Quality Deterioration (PSD) permit to Guardian Industries, Victorville, San Bernardino County, California, EPA project number SE 82-01.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on June 10, 1982 the Environmental Protection Agency issued a PSD permit to the applicant named above for approval to construct and operate a float glass manufacturing plant in Victorville, San Bernardino County, California.

This permit has been issued under EPA's PSD (40 CFR 52.21) regulations and is subject to certain conditions including allowable emissions of SO_2 at 33.5 lbs/hr, and NO_x at 315 lbs/hr.

Best Available Control Technology (BACT) requirements for SO_2 include the burning of natural gas rather than fuel oil, limiting the saltcake-to sand ratio to 10 lbs. Saltcake to 1,000 lbs. sand, and recycling all available cullet. BACT requirements for NO_x include proper furnace design and the recycling of all available cullet.

Air Quality Impact Modeling was required for NO_2 and SO_2; continuous monitoring is not required. The source is subject to New Source Performance Standards.

DATE: The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by November 23, 1982.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address requests to: Kathryn Strickland (M-5), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105; (415) 974-8201.

Dated: September 31, 1982.

David P. Howekamp,

Acting Director, Air Management Division, Region 9.

[FR Doc. 82-26324 Filed 9-23-82; 8:45 am]

BILLING CODE 6560-50-M

[A-9-FRL 2214-1]

Issuance of PSD Permit to Merck & Co., Kelco Division

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice of Approval of Prevention of Significant Air Quality Deterioration (PSD) permit to Merck & Co., Kelco Division, San Diego County, California, EPA project number SD 81-01.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on February 10, 1982 the Environmental Protection Agency issued a PSD permit to the applicant named above for approval to construct a cogeneration facility utilizing gas turbines with duct burners and waste heat boilers in San Diego County, California.

This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration (40 CFR 52.21) regulations and is subject to certain conditions including an allowable emission rate for NO_x of 303 tons per year.

Best Available Control Technology (BACT) requirements include proper operation and design of the turbines using a water injection system. Air quality Impact Modeling was required for NO_x. Continuous monitoring is required; the source is not subject to New Source Performance Standards.

DATE: The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by November 23, 1982.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address requests to: Kathryn Strickland (M-5), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105; (415) 974-8201.

Dated: August 31, 1982.

David P. Howekamp,

Acting Director, Air Management Division, Region 9.

[FR Doc. 82-26323 Filed 9-23-82; 8:45 am]

BILLING CODE 6560-50-M

[A-9-FRC 2213-7]

Issuance of PSD Permit to Pacific Gas & Electric Company

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice of Approval of Prevention of Significant Air Quality Deterioration (PSD) permit to Pacific Gas & Electric Company for their Geysers Unit 16 facility north of Healdsburg, Lake County, California.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on May 21, 1982 the Environmental Protection Agency issued a PSD permit to the applicant named above for approval to construct a 110 MW geothermal-electric generating station in Lake County, California, EPA project number NC 81-02.

This permit has been issued under EPA's PSD (40 CFR 52.21) regulations and is subject to certain conditions including an allowable emission rate of 7.5 lbs/hr for hydrogen sulfide.

Best Available Control Technology (BACT) requirements include Stretford process for noncondensible gases and a hydrogen perioxide/catalyst system to treat condensate, as necessary to meet emission limits. Pacific Gas & Electric Company will enter into agreement with their steam supplier regarding the necessary degree of control during turbine outages.

Air Quality Impact Modeling was not required; continuous monitoring is not required; the source is not subject to New Source Performance Standards.

DATE: The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by November 23, 1982.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address requests to: Kathryn Strickland (M-5), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105; (415) 974-8201.

Dated: September 31, 1982.

David P. Howekamp,

Acting Director, Air Management Division, Region 9.

[FR Doc. 82-26326 Filed 9-23-82; 8:45 am]

BILLING CODE 6560-50-M

[A-10-FRL 2213-8]

Issuance of PSD Permit to Union Oil Company of California

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice of Approval of Prevention of Significant Air Quality Deterioration (PSD) permit to Union Oil Company of California, Kern County, California, EPA project number SJ 82-04.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on June 21, 1982 the Environmental Protection Agency issued a PSD permit to the applicant named above for approval to construct one 62.5 MMBtu/hr steam generator with control equipment retrofit on an existing generator, and contemporaneous relocation of two generators to their McKittrick 8 Lease, Kern County, California.

This permit has been issued under EPA's PSD (40 CFR 52.21) regulations and is subject to certain conditions including an allowable emission rate of 0.13 lb/MMBtu for NO_x.

Best Available Control Technology (BACT) requirements for NO_x include use of MHI Lo-NO_x Burners. Air Quality Impact Modeling was required for NO_x. Continuous monitoring is not required; the source is not subject to New Source Performance Standards.

DATE: The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by November 23, 1982.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address requests to: Kathryn Strickland (M-5), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105; (415) 974-8201.

Dated: August 31, 1982.

David P. Howekamp,

Acting Director, Air Management Division, Region 9.

[FR Doc. 82-26327 Filed 9-23-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59057B; TSH FRL 2214-4]

Copolymer of Acrylamide; Extension of Test Marketing Exemption Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the test marketing period for an additional 12 months for test marketing exemption (TME) TM-81-25, under the authority of section 5(h)(1) of the Toxic Substances Control Act (TSCA). The test marketing exemption was granted for a 1-year period to expire on August 28, 1982, and a Notice of Approval was published in the **Federal Register** of September 8, 1981 (46 FR 44884).

EFFECTIVE DATE: September 15, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-59057B; TM-81-25]," may be submitted on or before October 13, 1982 and should be addressed to: Document Control Officer (TS-793), Office of pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: June Thompson, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, D.C. 20460; (202-382-3737).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA 90 days before manufacture or import begins. Section 5(h)(1) authorizes EPA, upon receipt of an application, to exempt any person from the notice requirements of section 5 and to permit them to manufacture a new chemical substance for test marketing purposes. EPA may impose restrictions on the test marketing activity, including a limit on the time period during which it may take place.

On August 28, 1981, EPA granted a test marketing exemption (TM-81-25) for a copolymer of acrylamide (generic description). The generic use of the test market substance is as a paper additive. The submitter claimed the company identity, specific chemical identity, specific use, and production volume to be confidential business information. Notice of Approval of the TME was published in the **Federal Register** of September 8, 1981 (46 FR 44884). Approval was based on an Agency finding that, under the conditions set out in the application, the test market substance did not present an unreasonable risk of injury to health or to the environment. Overall concerns for health and environmental effects were low. Minimal human exposure and environmental release is expected. Test marketing activity was limited to 1 year. On July 29, 1982, EPA received a request from the submitter to extend the test marketing period for an additional 12 months. The company states that due to adverse economic conditions, the market for the new chemical has developed more slowly than was anticipated and that further test marketing is desirable prior to commercialization consideration.

EPA has decided to extend the 1 year exemption period by an additional 12 months, provided that all other restrictions specified in the notice of approval of the test marketing exemption remain unchanged. These include record-keeping requirements, limit on production volume as originally specified, and worker protection measures. This decision is based on a finding that the additional time will not affect the Agency's original conclusion that test marketing of this substance will not present an unreasonable risk of injury to human health or the environment. The Agency reserves the right to rescind its decision to grant this extension should any new information come to its attention which casts significant doubt on this conclusion.

Dated: September 15, 1982.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 82-26318 Filed 9-23-82; 8:45 am]

BILLING CODE 6560-50-M

[A-9-FRL 2213-7]

Issuance of PSD Permit to U.S. Borax & Chemical Corp.

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice of Approval of Prevention of Significant Air Quality Deterioration (PSD) permit to U.S. Borax and Chemical Corporation in Boron, Kern County, California, EPA project number SE 81-04.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on April 27, 1982 the Environmental Protection Agency issued a PSD permit to the applicant named above for approval to install a combustion gas turbine with a heat recovery steam generator at their existing plant at Boron, CA, which will allow them to produce electricity and process steam to be used at the plant. Electricity not utilized by this facility would be exported for use in the public utility grid.

This permit has been issued under EPA's PSD (40 CFR 52.21) regulations and is subject to certain conditions including allowable emission rates as follows: nitrogen oxides at 245.0 lbs/hr, carbon monoxide at 172.0 lbs/hr, particulate matter at 13.0 lbs/hr, and sulfur dioxide at 147.9 lbs/hr.

Best Available Control Technology (BACT) requirements include water injection with a water-to-fuel ration of approximately 0.8 for NO_x and burning natural gas or No. 2 oil with a sulfur content of 0.4% or less for SO_2. Air Quality Impact Modeling was required for SO_2, Particulates, NO_x and CO. Continuous monitoring is required and the source is subject to New Source Performance Standards.

DATE: The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by November 23, 1982.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Kathryn Strickland (M-5), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105; (415) 974-8201.

Dated: September 31, 1982.

David P. Howekamp,

Acting Director, Air Management Division, Region 9.

[FR Doc. 82-26325 Filed 9-23-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59097E; TSH FRL 2214-2]

Metal Compounds; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA received applications for test marketing exemptions (TM-82-39, TM-82-40, TM-82-41, TM-82-42) under section 5 of the Toxic Substances Control Act (TSCA) on August 5, 1982. Notice of receipt of the applications were published in the **Federal Register** of August 13, 1982 (47 FR 35331). EPA has granted the exemptions.

EFFECTIVE DATE: September 15, 1982.

FOR FURTHER INFORMATION CONTACT: Rose Allison, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, D.C. 20460; (202-382-3738).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions," contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirements of section 5(a) or section 5(b), and to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of this disposition in the **Federal Register.** If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On August 5, 1982, EPA received applications for exemptions from the requirements of sections 5(a) and 5(b) of TSCA to manufacture new chemical substances for test marketing purposes. The applications were assigned test marketing exemption numbers, TM-82-39, TM-82-40, TM-82-41, and TM-82-42. The submissions are for an organic complex of a halogenated metal; product of an alcohol and a halogenated metal; product of an alcohol, halogenated metal, and an organic complex of a halogenated metal; and an organic complex of a halogenated metal. The submitter claimed its identity, the specific chemical identities, specific uses, production volume, industrial sites, exposure, process information, and toxicological values of components as confidential business information. The TME substances will be test marketed for a period not to exceed 1 year.

A notice published in the **Federal Register** of August 13, 1982 (47 FR 35331) announced receipt of these applications and requested comment on the appropriateness of granting the exemptions. The Agency did not receive any comments concerning the applications.

EPA has established that the test marketing of the new chemical substances submitted under TM-82-39, TM-82-40, TM-82-41, and TM-82-42 will not present an unreasonable risk of injury to health or to the environment under the specific conditions set out in the applications. The Agency identified possible health and ecological concerns, but the Agency determined that lack of exposure and environmental release mitigates these concerns.

These test marketing exemptions are granted based on the facts and information obtained and reviewed, but are subject to all conditions set out in the exemption applications and, in particular, those enumerated below.

1. These exemptions are granted solely to this manufacturer.

2. The applicant must maintain records of the date(s) of shipment(s) to the customers and the quantities shipped in each shipment, and must make these records available to EPA upon request.

3. Each bill of lading that accompanies a shipment of the substances during the test marketing period must state that the use of the substances is restricted to that described to EPA in the test marketing exemption applications.

4. The production volume of the new substances may not exceed the quantity described in the test marketing exemption applications.

5. The test marketing activity approved in this notice is limited to a 1-year period commencing on the date of signature of this notice by the Director of the Office of Toxic Substances.

6. The number of workers exposed to the new chemicals should not exceed that specified in the applications, and the exposure levels and duration of exposure should not exceed those specified in the applications.

The Agency reserves the right to rescind its decision to grant these exemptions should any new information come to its attention which casts significant doubt on the Agency's conclusion that the test marketing of these substances under the conditions specified in the applications will not

present an unreasonable risk of injury to human health or the environment.

Dated: September 15, 1982.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 82-26322 Filed 9-23-82; 8:45 am]

BILLING CODE 6560-50-M

[A-7-FRL 2213-1]

Non-Applicability of PSD Regulations to Hawkeye Chemical Co. and Northern Natural Gas Co.

Notice is hereby given that the Environmental Protection Agency (EPA) has determined that construction proposals by the above companies are not subject to the review requirements of the Prevention of Significant Air Quality Deterioration (PSD) regulations (40 CFR 52.21).

On June 25, 1982, the EPA issued a non-applicability determination to the Hawkeye Chemical Company for a proposal to install a nitric acid distillation unit at an existing ammonia plant. Since the proposed project would not result in a significant increase in emissions from the plant, the PSD regulations did not apply.

On May 3, 1982, the EPA issued a non-applicability determination to the Northern Natural Gas Company for a proposal to install two 1000-horse-power natural gas reciprocating engines at their Stevens County No. 6 compressor station. Since the existing station was not a "major" stationary source and the modification itself could not be classified as "major," the PSD regulations did not apply.

Under Section 307(b)(1) of the Clean Air Act, as amended in August 1977, judicial review of any of the above actions is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2), the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

In the above cases, the appropriate courts are the Eighth Circuit Court of Appeals for Hawkeye Chemical Company of Clinton, Iowa, and the Tenth Circuit Court of Appeals for the Northern Natural Gas Company of Liberal, Kansas. A petition for review must be filed with the appropriate court on or before November 23, 1982.

Copies of these determinations and related information are available for public inspection at: U.S. Environmental Protection Agency, Air and Waste Management Division, Air Branch, 324 East 11th Street, Kansas City, Missouri 64106.

Dated: September 8, 1982.

William W. Rice,

Acting Regional Administrator.

[FR Doc. 82-26330 Filed 9-23-82; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2215-8]

Availability of Environmental Impact Statements Filed September 13 Through September 17, 1982, Pursuant to 40 CFR Part 1506.9

RESPONSIBLE AGENCY: Office of Federal Activities, General Informaiton 382-5075 or 382-5076.

Corps of Engineers
- EIS No. 820615, Draft, COE, NC, Prulean Farms Agricultural Development, 404 Permit, Dare County, Due: Nov. 8, 1982
- EIS No. 820606 Draft, COE, TN, Obion and Forked Deer Rivers Basin, Stream Renovation, Permits Due: Nov. 8, 1982

Department of Commerce
- EIS No. 820622, Draft, NOA, SEV, REG, American Lobster Fishery Management Plan, Approval Due: Nov. 8, 1982

Department of Interior
- EIS No. 820623, Draft, BLM, SEV, UT, WY, Frontier Pipeline Crude Oil/Condensate Pipeline Right-of-Way, Due: Nov. 19, 1982
- EIS No. 820613, Draft, BLM, SEV, WY, CO, Savery Project, Coal Lease Applications, Due: Nov. 15, 1982
- EIS No. 820616, Final, BLM, AZ, Lower Gila North Grazing Mgmt. Plan, Mohave/Yuma/Yavapai/Maricopa Cos, Due: Oct. 25 1982
- EIS No. 820619, Final, BLM, CA, Bodie-Coleville Planning Units, Grazing Management Plan, Mono County, Due: Oct. 29, 1982
- EIS No. 820620, Final, BLM, NV, Clark County Livestock Grazing Management Program, Clark County, Due: Oct. 25 1982
- EIS No. 820608, Final, BLM, OR, Brothers Area Grazing Mgmt. Plan, Crook, Harney, Lake & Deschutes Cos, Due: Oct. 25, 1982
- EIS No. 820614, Draft, FWS, VA, False Cape State Park/Back Bay Nat'l Wildlife Refuge, Land Exchange, Due: Nov. 12, 1982

Department of Transportation
- EIS No. 820610, Final, FHW, TX, U.S. 281 Bypass Construction, City of Alice, Jim Wells County, Due: Oct. 25, 1982
- EIS No. 820611, Final, CGD, NY, South Bronx-Oak Point Link Railroad Improvement, Permit, Bronx County, Due: Nov. 1, 1982

Environmental Protection Agency
- EIS No. 820609, Final, EPA, SEV, NY, NJ, New York Bight Cellar Dirt Ocean Disposal Site Designation, Due: Oct. 25, 1982

Nuclear Regulatory Commission
- EIS No. 820618, Final, NRC, MD, Nat'l Bureau of Standards Reactor, License Renewal, Montgomery County, Due: Oct. 25, 1982

Department of Agriculture
- EIS No. 820607, Draft, AFS, SEV, CO, KS, Pike & San Isabel National Forests Land & Resource Mgmt. Plan, Due: Dec. 15, 1982
- EIS No. 820594, Final, AFS, AZ, San Francisco River Wild and Scenic Study, Apache NF, Greenlee County, Due: Oct. 25, 1982
- EIS No. 820602, Final, AFS, AZ, Verde Wild and Scenic River Study, Yavapai and Gila Counties, Due: Oct. 25, 1982
- EIS No. 820595, Final, AFS, CO, Piedra Wild/Scenic River, San Juan NF, Hinsdale/Mineral/Archuleta Cos, Due: Oct. 25, 1982
- EIS No. 820598, Final, AFS, CO, Elk Wild and Scenic River Study, Routt National Forest, Routt County, Due: Oct. 25, 1982
- EIS No. 820603, Final, AFS, CO, Los Pinos River Wild and Scenic Study, San Juan NF, Hinsdale County, Due: Oct. 25, 1982
- EIS No. 820605, Final, AFS, CO, Spruce Creek Addition Wilderness Study Area, White R. NF, Pitkin Co., Due: Oct. 25, 1982
- EIS No. 820601, Final, AFS, MI, AuSable River Wild/Scenic Study, Huron NF, Alcona/Crawford/Oscoda Cos, Due: Oct. 25, 1982
- EIS No. 820621, Final, AFS, MO, Paddy Creek Wilderness Study, Mark Twain National Forest, Texas Co., Due: Oct. 25, 1982
- EIS No. 820600, Final, AFS, WY, Clarks Fork Wild and Scenic River Study, Shoshone NF, Park County, Due: Oct. 25, 1982
- EIS No. 820604, Final, AFS, AZ, Salt River Wild and Scenic Study, Tonto National Forest, Gila County, Due: Oct. 25, 1982
- EIS No. 820617, Final, REA, SEV, IL, MO, Pike County Generating Facility/Associated Transmission Lines, Due: Oct. 25, 1982

Veterans Administration
- EIS No. 820612, Final, VAD, CA, San Francisco VA Medical Center, Nursing Home Addition, San Francisco, Due: Oct. 25, 1982

Amended Notice:
- EIS No. 820580, Final, RLM, OR, Riley Area Grazing Management Program, Harney County, Due: Oct. 30, 1982 Published FR 9/17/82—Review extended.

Dated: September 21, 1982.

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 82-26357 Filed 9-23-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Performance Review Board; Appointment of New Members

As required by the Civil Service Reform Act of 1978 (Pub. L. 95-454), Chairman Mark S. Fowler has appointed effective October 4, 1982, the following

members of the Performance Review Board, to fill two vacancies.

Peter Pitsch, Chief, Office of Plans & Policy, NTE April 22, 1985

Henry Baumann, Deputy Chief, Broadcast Bureau, NTE April 22, 1984

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-26281 Filed 9-23-82; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974, Amendments; Annual Publication of Systems of Records

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of Amendments; Annual Publication of Systems of Records.

SUMMARY: The purpose of this document is to meet the requirements of the Privacy Act to (1) provide public notice of changes to FDIC's existing systems of records, and (2) publish an annual notice of the existence and character of FDIC's systems of records. The majority of the changes in the systems of records are housekeeping in nature and reflect changes in office designations and programs. The two significant changes are (1) the consolidation of four existing systems relating to employee financial information into one system, and (2) expanding the exemption to disclosure of investigatory material. Each system, as amended, is republished in its entirety.

DATE: Comments on the changes to the systems of records must be received on or before November 23, 1982. The amendments will be effective November 30, 1982, unless the FDIC publishes a superseding notice on or before that date.

ADDRESS: Comments may be mailed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429, or hand delivered during work days to Room 6108, 550 17th Street, NW., Washington, D.C., between 9:00 a.m. and 5:00 p.m. Comments received may also be inspected during work days in Room 6108 between 9:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Margaret M. Olsen, Assistant Executive secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Room 6108, Washington, D.C. 20429, (202) 389-4446.

SUPPLEMENTARY INFORMATION: As stated above, two major changes are being made. First, information relating to employee financial records will be consolidated into one system (30-64-0012). Presently, this information is contained in four systems (30-64-0006, 30-64-0012, 30-64-0013, 30-64-0014) This consolidation does not expand the categories of individuals or records in the system, the routine uses of the system or access to the information. For the purpose of uniformity, the retention period will be three years or during employment. Presently one system (30-64-0013) has a two-year retention period.

Second, as provided for in the Privacy Act, FDIC regulation § 310.13 (12 CFR 310.13) provides that investigatory material compiled for law enforcement purposes is exempt from disclosure (unless a person would otherwise be denied an entitled to right, privilege or benefit). In its system description of the two exempt systems (30-64-0002, 30-64-0011), the FDIC further limited the use of this exemption to circumstances where disclosure would interfere with the investigation and preparation of law enforcement proceedings. In a few instances, a concern has been raised that disclosure of investigatory material could have an adverse impact on FDIC's law enforcement functions even if the investigation and preparation of the proceedings has ended. Consequently, this criterion would be deleted from the system description. As a matter of policy, the FDIC will continue to disclose otherwise exempt investigatory material unless disclosure will harm the interests of the FDIC.

The remaining changes are viewed as housekeeping in nature and include the following:

1. Disclosure to an arbitrator is added as a routine use to six systems (30-64-0001, 30-64-0007, 30-64-0009, 30-64-0012, 30-64-0015, 30-64-0018) to reflect the fact that an arbitration procedure was established by employee collective bargaining agreements.

2. The Board of Directors has delegated or may delegate authority to standing committees or other officials to take administrative action. System 30-64-0003 is revised to reflect this delegation in the system name and description of categories of individuals and records covered. The authority provision of this system is revised to reflect the addition of section 9 of the Federal Deposit Insurance act ("FDI Act") (12 U.S.C. 1819) and the deletion of section 2 of the FDI Act (12 U.S.C. 1812).

3. The Legal Division no longer maintains information on persons seeking FDIC's consent under section 19 of the FDI Act (30-64-0011). The categories of individuals covered and the authority provision are changed to reflect this.

4. Several changes are made to the system on personnel-related records (30-64-0015). The changes reflect that (1) records may be located in field offices; (2) FDIC-sponsored life and health insurance is available; (3) upward mobility is now coordinated by the Office of Personnel Management; (4) records on employee performance, assignments and experience may be in the system; and (5) computer discs are accessed only by authorized personnel.

5. Assistant examiner progress evaluation records are maintained for a two-year period and no longer three years (30-64-0009).

6. Records relating to employee grievances will be maintained by the Office of Personnel Management (30-64-0018).

7. The description of the categories of individuals covered by the system including change in bank control records (30-64-0012) is amended to include "persons." This is for clarification purposes and does not expand the category of covered individuals.

8. The title of the office administering to consumer complaints is change (30-64-0005).

9. Because of amendments to the Federal Reports Act, reference to that statute in the authority citation for records on municipal securities dealers is deleted (30-64-0016).

The FDIC is reprinting each system, as amended, in its entirety.

FDIC Systems of Records

30-64-0001

SYSTEM NAME:

Attorney—Legal Intern Applicant System—FDIC.

SYSTEM LOCATION:

Office of the General Counsel, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for the position of attorney or legal intern with the General Counsel's office of the FDIC.

CATEOGORIES OF RECORDS IN THE SYSTEM:

Contains correspondence from the applicants and individuals whose names were provided by the applicants as references, applicants' resumes, application forms, and, in some instances, comments of individuals who interviewed applicants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of information may be made: (1) In requesting information of individuals or concerns whose names were supplied by the applicant as references and/or past or present employers; (2) to the United States Office of Personnel Management, the Merit Systems Protection Board, the Office of Special Counsel, the Federal Labor Relations Authority, an arbitrator, and the Equal Employment Opportunity Commission, to the extent disclosure is necessary to carry out the government-wide personnel management, investigatory, adjudicatory and appellate functions within their respective jurisdictions; (3) to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folders.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in lockable metal file cabinets.

RETENTION AND DISPOSAL:

Records of unsuccessful applicants are retained two years after their submission; records of successful applicants are retained four years after the successful applicant leaves the employ of the FDIC.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

NOTIFICATION PROCEDURE:

Executive Secretary, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

RECORD ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

The information is obtained from the applicants, references supplied by the applicants, current and/or former employers of the applicants, and FDIC employees who interviewed the applicants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to § 310.13(b) of the FDIC's Rules and Regulations, investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for FDIC employment may be withheld from disclosure to the extent that disclosure of such material would reveal the identify of a source who furnished information to the FDIC under a promise of confidentiality.

30-64-0002

SYSTEM NAME:

Bank and Proposed Bank Irregularity Records System—FDIC.

SYSTEM LOCATION:

Operations Branch, Division of Bank Supervision, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Directors, officers and employees of FDIC-insured banks who have been involved in reported irregulaties. Directors and officers of noninsured banks and organizers of proposed banks which have applied for Federal deposit insurance and who have been involved in reported irregularities. Customers of FDIC-insured banks, and other individuals, who have been involved in reported irregularities at such banks. In addition, the system may contain information on individuals who have been the subject of background checks designed to uncover irregularities bearing on these individuals' fitness to be directors, officers, or employees of their banks or to control management. These individuals may include the following: directors, officers and employees of FDIC-insured banks; directors and officers of uninsured banks and organizers of proposed banks which have applied for Federal deposit insurances; and controlling shareholders of banks or persons endeavorting to gain control over FDIC-insured banks.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains interagency correspondence, intra-agency memoranda and reports of investigation. May contain newspaper clippings. May contain Federal or State criminal law enforcement agency investigatory and/or arrest and conviction reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 5, 6, 7, 9, 18 and 19 of the Federal Deposit Insurance Act (12 U.S.C. 1815, 1816, 1817, 1819, 1828, 1829).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) In the event that information contained in this system indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred to the appropriate agency, whether Federal or State, charged with the responsibility of investigating or prosecuting such violation or charges with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(2) In the event of litigation, the appropriate records may be presented to the appropriate court, magistrate, or administrative tribunal as evidence, or to counsel for the presentation of evidence and/or in the course of discovery.

(3) Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of the individual.

(4) Disclosure may be made to the bank affected by a discovered irregularity.

(5) Disclosure may be made to another Federal of State financial institution regulatory agency if the individual involved has notified that agency of his/her intent to acquire controlling interest in a bank or bank holding company, has filed an application for a bank charter or to form a bank holding company, or has or will become associated with an insured bank under that agency's supervision.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Maintained on file cards and in file folders.

RETRIEVABILITY:

Indexed by name

SAFEGUARDS:

Index cards and file folders are maintained in lockable metal file cabinets.

RETENTION LAND DISPOSAL:

Destruction after five years. Destruction is by shredder.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Bank Supervision, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

NOTIFICATION PROCEDURE:

Executive Secretary, FDIC, 550 17th Street, NW., Washington, D.C. 20429. Inquirers must provide their full names and notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

FDIC-insured banks and applicants for Federal deposit insurance; Federal and State banking supervisory authorities; newspapers; Federal and State criminal law enforcement and prosecutorial agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to section 310.13(a) of the FDIC's rules and regulations, investigatory material compiled for law enforcement purposes, concerning irregularities involving (1) officers, directors, employees, customers, or other individuals at FDIC-insured banks or (2) directors and officers of noninsured banks or organizers of proposed banks which have applied for Federal deposit insurance, is exempted from the accounting provisions of section 310.10(d)(2) of the FDIC's rules and regulations and may be withheld from disclosure. Federal criminal law enforcement investigatory reports maintained as part of this system may be the subject of exemptions imposed by the originating agency pursuant to 5 U.S.C. 552a(j)(2).

30-64-0003

SYSTEM NAME:

Administrative Action System—FDIC.

SYSTEM LOCATION:

Office of the Executive Secretariat, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been subject to administrative actions by the FDIC Board of Directors or by standing committees or other officials under delegated authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains minutes of the meetings of the Board of Directors or standing committees, intra-agency memoranda, orders of the Board of Directors, standing committees, or other officials, and correspondence with the subject individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 8, 9 and 19 of the Federal Deposit Insurance Act (12 U.S.C. 1818, 1819, 1829); Sec. 506 of the Federal Records Act of 1950 (44 U.S.C. 3101).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Index cards and minute ledgers.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Index cards are stored in lockable metal file cabinets; minute ledgers are stored in vault.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS: EXECUTIVE SECRETARY, FDIC, 550 17TH STRET, NW., WASHINGTON, D.C. 20429.

NOTIFICATION PROCEDURE:

Same as "System manager" above.

RECORD ACCESS PROCEDURES:

Same as "System manager" above.

CONTESTING RECORD PROCEDURES:

Same as "System manager" above.

RECORD SOURCE CATEGORIES:

Intra-agency records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

30-64-0004

SYSTEM NAME:

Changes in Bank Control Ownership Records—FDIC.

SYSTEM LOCATION:

Operations Branch, Division of Bank Supervision, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been involved in the change of bank control or ownership in FDIC-insured banks and/or have obtained loans from insured banks, when such loans are secured by 25 percent or more of the outstanding stock of an insured bank.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the name of the individual seller or purchaser of shares of stock, the number of shares of stock involved and outstanding, the name of the bank whose control is changing, the purchase price of the stock, the names of beneficial owners if the shares are registered in another name, the total number of shares owned by the seller, purchaser, or beneficial owner, both before and after the transactions, the personal history, business backgound and experience, and pending legal or administrative proceedings involving each purchaser or beneficial owner, financial and income statements of purchasers or beneficial owners, the source of funds used in the purchase, the identity of any person who will solicit stockholders in connection with the purchase, ther terms and conditions of the acquisition, any plans to make a major change to the business or corporate structure of the acquired bank, copies of invitations, tenders, or advertisements used in making tender offers to stockholders, comments by State and Federal regulatory agencies, and changes of directors and chief executive officers within one year of the change in control and a statement of their past and current business and professional affiliations. In the case of loans, contains all of the information listed above and contains the name and location of the lending bank, the name and address of the borrower, the amount of the loan and the name of the bank issuing the stock securing the loan and the number of shares securing the loan.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The name of the bank whose control is changing, the seller and purchaser, and the number of shares involved, may be distributed to periodicals for publication.

(2) In the event that the system of recordes indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal or State, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or

implementing the statute, or rule, regulation or order issued pursuant thereto.

(3) In the event of civil, criminal, or administrative law enforcement proceedings, the relevant records may be disclosed to the appropriate court and/or counsel for purposes of discovery and the development of the proceedings.

(4) Disclosure may be made to the appropriate State banking authority and the appropriate Federal financial institutions regulatory agency as required by the Change in Bank Control Act of 1978 (section 7 (j)(11)) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(11)) as added by section 602 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (92 Stat. 3686).

(5) Disclosure may be made to a law enforcement or other government agency, whether Federal or State, for the purpose of identity verification.

(6) Disclosure may be made to a congressional office from the record of an individual as may be necessary to respond to an inquiry from the congressional office made at the request of the individual.

(7) The records may be disclosed to third parties for the purposes of verifying the accuracy and/or completeness of any of the information contained in these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Maintained in file folders and on index cards.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in lockable metal file cabinets.

RETENTION AND DISPOSAL:

Destruction after 10 years. Destruction is by shredder.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Bank Supervision, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

NOTIFICATION PROCEDURE:

Executive Secretary, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

RECORD ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

The persons who are acquiring control of an FDIC-insured bank, the bank in which control is changing, the bank which makes a loan secured by 25 percent or more of the outstanding voting stock of an insured bank, and State and Federal regulatory agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

30-64-0005

SYSTEM NAME:

Consumer Complaint and Inquiry Records—FDIC.

SYSTEM LOCATION:

Division of Bank Supervision, Consumer Affairs Unit, FDIC, 550 17th Street, NW., Washington, D.C. 20429, and the appropriate FDIC regional office for complaints or inquiries originating within or involving a bank located in an FDIC region. (See Appendix A for the location of FDIC regional offices.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed complaints or inquiries concerning activities and practices of FDIC-insured banks.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the names of individuals and the nature of their complaints or inquiries. Contains correspondence and records of other communications between the FDIC and the individuals filing complaints and/or making inquiries. May contain correspondence between the FDIC and the bank in question and/or Federal or State supervisory authorities. May contain copies of supporting documents supplied by a complainant and intra-agency memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 202 of title II of the Federal Trade Improvement Act (15 U.S.C. 57a(f)); sec. 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Since records are compiled and used for investigation and resolution of consumer inquiries and complaints, disclosure may be necessary to the institution which is the subject of the complaint.

(2) Resolution of the complaint or inquiry may also require disclosure limited to the name of the inquirer and the nature of the inquiry to third party sources during the course of the investigation.

(3) Transmittal may be made to the Federal or State supervisory authority that has direct supervision over the financial institution that is the subject of the complaint.

(4) In the event that the system of records indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system may be referred to the appropriate agency, whether Federal or State, charged with the responsibility of investigating or prosecuting such violations or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(5) In the event of civil, criminal or administrative proceedings, the relevant records may be disclosed to the appropriate court and/or counsel for purposes of discovery and the development of the proceedings.

(6) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Maintained in file folders and on computer discs and tapes.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in lockable metal file cabinets; computer tapes and discs are accessed only by authorized personnel.

RETENTION AND DISPOSAL:

Records are retained for two years after receipt unless updated by correspondence received during the previous year. Correspondence files are destroyed by shredder; computer tapes and discs are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Bank Supervision, FDIC, 550 17th Street, NW., Washington, D.C. 20429. The appropriate FDIC regional director for records maintained in FDIC regional offices. (See Appendix A for the location of FDIC regional offices.)

NOTIFICATION PROCEDURE:

Executive Secretary, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

RECORD ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

The information is obtained from the individual on whom the record is maintained; institutions that are the subject of the complaint; the appropriate agency, whether Federal or State, with supervisory authority over the institution; congressional offices that may initiate the inquiry; and other third party sources mentioned in "Routine use" above.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

30-64-0006

SYSTEM NAME:

Employee Financial Disclosure Statements—FDIC.

SYSTEM LOCATION:

Office of the Executive Secretariat, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former officers and employees, including Special Corporation employees and employees occupying noncompetitive positions, required to file Public Financial Disclosure Reports pursuant to the Ehtics in Government Act of 1978 (92 Stat. 1836); current and former employees required to file Confidential Statements of Employment and Financial Interests pursuant to Executive Order 11222 and 12 CFR Part 336; current and former bank examiners and assistant bank examiners required to file disclosures of their personal indebtedness to insured banks or affiliates thereof pursuant to Part 336; and all current and former employees required to disclose their ownership of insured bank securities and other outside interests pursuant to Part 336.

CATEOGORIES OF RECORDS IN THE SYSTEM:

Information in this system includes records relating to, or data directly furnished by, the subject individual, on the following four forms:

(1) Financial Disclosure Reports, Standard Form 278—Contains financial information such as income from salaries, honoraria, dividends, rent, interest, trusts and captial gains; interest in property held in a trade or business or for investment or the production of income; income from the sale, exchange or purchase of real property or property such as stocks and bonds; gifts; reimbusements; liabilities in excess of $10,000 owed to any creditors; copies of and documents relating to qualified blind trusts; information on positions held in private organizations and on agreements with private employers; and other documents that may be generated in the course of administering the Ethics in Government Act of 1978;

(2) Confidential Statements of Employment and Financial Interests—Contains statements of personal and family holdings, interests in business enterprises and real property, creditors, outside employment, and other documents that may be generated in the course of administering the provisions of Executive Order 11222 and Part 336;

(3) Confidential Disclosures of Indebtedness by Bank Examiners—Contains information on extensions of credit (loans and credit cards) by FDIC-insured banks and noninsured banks to examiners and assistant examiners; may also contain memoranda and correspondence relating to requests for approval of certain loans extended by insured banks to examiners and assistant examiners;

(4) Disclosures of Direct or Indirect Financial Interests in Bank or Other Interests—Contains information on whether or not employees own or control, directly or indirectly, any securities of an insured bank or its affiliates, and if so, lists specific securities; also contain information on other outside interests which may impact on an employee's offiical duties; may also contain memoranda and correspondence relating to requests for approval or retention of bank securities by employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title II of the Ethics in Government Act of 1978 (92 Stat. 1836); section 402 of Executive Order 11222 dated May 8, 1965; section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Financial Disclosure Reports may be disclosed upon written request to any requesting person pursuant to section 205 of the Ethics in Government Act of 1978 (92 Stat. 1836), as amended, or as otherwise authorized by law.

(2) Confidential Statements of Employment and Financial Interests, Confidential Disclosures of Indebtedness by Bank Examiners, and Disclosures of Direct or Indirect Financial Interests in Bank or Other Interests may be disclosed where the Director of the Office of Government Ethics or the Chairman of the Board of Directors of the FDIC determines that good cause has been shown for such use (a) to the appropriate Federal, State or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order where FDIC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (b) to provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of that individual; (c) to another Federal agency or to a court where the government is party to a judicial proceeding before the court; (d) to any source where necessary to obtain information relevant to a conflict-of-interest investigation or determination; (e) in response to a request for discovery or for an appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Maintained in file folders and on index cards.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in lockable metal file cabinets in lockable office to which only authorized personnel have access.

RETENTION AND DISPOSAL:

(1) Financial Disclosure Reports—Retained for six years and then destroyed by shredding.

(2) Confidential Statements of Employment and Financial Interests—Retained two years after separation of employee or two years after employee leaves the position for which the Confidential Statement was required and then destroyed by shredding.

(3) Confidential Disclosures of Indebtedness by Bank Examiners—(a) for examiners required to file Confidential Statements retained two years after separation of employee or two years after employee leaves the position for which the Confidential Statement was required; (b) for assistant examiners, destroyed when Corporation employment is terminated. Destruction is by shredding.

(4) Disclosures of Direct or Indirect Financial Interest in Bank or Other

Interest—(a) for employees required to file Financial Disclosure Reports, retained for six years and then destroyed; (b) for employees required to file Confidential Statement, retained two years after separation of employee or two years after employee leaves the position for which the statement was required; (c) for all other employees, destroyed when Corporation employment is terminated. In all cases, destruction is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Ethics Counselor, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

NOTIFICATION PROCEDURE:

Executive Secretary, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

RECORD ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

The information is obtained from the individual on whom the record is maintained or a person designated by him/her and from the Corporation's Ethics Counselor and support personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

30-64-0007

SYSTEM NAME:

Employee Education System—FDIC.

SYSTEM LOCATION:

Employee Development Branch, Office or Personnel Management, FDIC, 550 17th Street, NW., Washington, D.C. 20429; Division of Bank Supervision Training Center, FDIC, 1701 N. Fort Myer Drive, Arlington, Virginia 22209, for all FDIC bank examiners; the appropriate FDIC regional office for employees assigned to an FDIC region. (See Appendix A for the location of FDIC regional offices.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All present and former FDIC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the educational history of employees prior to their employment with the FDIC, and eductional progression of employees while employed by the FDIC. Information includes employee's schools of attendance, courses completed or enrolled in, dates of attendance, tuition fees and expenses, and may include per diem and travel expenses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); Exec. Order No. 9397, "Numbering System for Federal Accounts Relating to Individual Persons" (Nov. 22, 1943).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made: (1) To the United States Office of Personnel Management, the Merit Systems Protection Board, the Office of Special Counsel, the Federal Labor Relations Authority, an arbitrator, and the Equal Employment Opportunity Commission, to the extent disclosure is necessary to carry out the government-wide personnel management, investigatory, adjudicatory and appellate functions within their respective jurisdictions; (2) to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual; (3) to educational institutions for purposes of enrollment and verification of employee attendance and performance; and (4) to vendors, carriers, or other appropriate third parties, by the FDIC Office of Corporate Audits, for the purpose of verification, confirmation, or substantiation during the performance of audits or investigations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folders and computer discs.

RETRIEVABILITY:

File folders—alphabetically by name; computer discs—social security number.

SAFEGUARDS:

File folders are stored in lockable metal file cabinets; computer discs are accessed only by authorized personnel.

RETENTION AND DISPOSAL:

Permanent retention.

SYSTEMS MANAGER(S) AND ADDRESS:

Director, Office of Personnel Management, FDIC, 550 17th Street, NW., Washington, D.C. 20429; Director, Division of Bank Supervision, FDIC, 550 17th Street, NW., Washington, D.C. 20429, for records maintained at Division of Bank Supervision Training Center; the appropriate FDIC regional director for records maintained in FDIC regional offices. (See Appendix A for the location of FDIC regional offices.)

NOTIFICATION PROCEDURE:

Executive Secretary, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

RECORD ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

The information is obtained from the employee on whom the record is maintained and the training institution in which the employee is enrolled.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

30-64-0008

[Reserved]

30-64-0009

SYSTEM NAME:

Examiner, Training and Education Records—FDIC.

SYSTEM LOCATION:

Division of Bank Supervision Training Center, FDIC, 1701 N. Fort Myer Drive, Arlington, Virginia 22209.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FDIC assistant examiners who have been candidates for determination of progress to become a commissioned bank examiner (progress evaluation candidates). FDIC examiners who attend, or have attended, graduate schools of banking (graduate school of banking students).

CATEGORIES OF RECORDS IN THE SYSTEM:

Progress Evaluation Candidates—contains a statement of the candidate's education, home address, date and place of birth, and experience, a report of evaluation of a progress evaluation panel, the consolidated findings of each progress evaluation panel member, the candidate's case studies, basic work papers, and responses, and, in the case of an unsuccessful candidate, the candidate's complete work papers and reponses, as well as the individual findings of each progress evaluation panel member.

Graduate school of banking students—contains the student's name, enrollment data, record of attendance, record of completion or graduation and general correspondence between the FDIC and the student's school of enrollment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 10(b) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to: (1) The United States Office of Personnel Management, the Merit Systems Protection Board, the Office of Special Counsel, the Federal Labor Relations Authority, an arbitrator, and the Equal Employment Opportunity Commission, to the extent disclosure is necessary to carry out the government-wide personnel management, investigatory, adjudicatory and appellate functions within their respective jurisdictions; (2) to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual; (3) to educational institutions for purposes of enrollment and verification of employee attendance and performance; and (4) to vendors, carriers, or other appropriate third parties, by the FDIC Office of Corporate Audits, for the purpose of verification, confirmation, or substantiation during the performance of audits or investigations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in lockable metal file cabinets.

RETENTION AND DISPOSAL:

Progress evaluation candidates' records maintained for two years for the successful candidate and then destroyed by shredder, records of unsuccessful candidate retained until the candidate's successful completion or until the candidate leaves the FDIC's employ. Graduate school of banking student records are permanently retained.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Bank Supervision, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

NOTIFICATION PROCEDURE:

Executive Secretary, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

RECORD ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

Progress evaluation candidates—the candidate, the candidate's personnel record, and members of the candidate's progress evaluation panel. Graduate school of banking students—the student, the student's school, and the student's personnel record.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to § 310.13(c) of the FDIC's rules and regulations, testing material used solely to assess individual qualifications for appointment or promotion, the disclosure of which would compromise the objectivity or fairness of the testing, evaluation or examination process, may be withheld from disclosure.

30-64-0010

[Reserved]

30-64-0011

SYSTEM NAME:

Legal Compliance and Enforcement Records—FDIC.

SYSTEM LOCATION:

Office of the General Counsel, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Directors, trustees, officers, or other persons participating in the conduct of the affairs of an FDIC-insured bank which is not a member of the Federal Reserve System ("an FDIC-insured nonmember bank") who have been the subject of an indictment, information or complaint for a felony involving dishonesty or breach of trust. Directors, trustees, officers or other persons participating in the conduct of the affairs of an FDIC-insured nonmember bank who are suspected of committing violations of law, rule or regulation, or of a final cease-and-desist order, or of committing acts, omissions or practices constituting a breach of fiduciary duty.

CATEOGORIES OF RECORDS IN THE SYSTEM:

Contains the indictment, information, or complaint filed against the subject individual, and any court order or resolution of such indictment, information, or complaint. Contains newspaper clippings on subject individuals. Contains affidavits of the subject individual and bank employees. Contains intra-agency memoranda and general correspondence between the FDIC and the subject individual and/or his/her attorney. Contains final administrative orders issued by the FDIC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) In the event that the system of records indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system may be referred to the appropriate agency, whether Federal or State, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issed pursuant thereto.

(2) In the event of civil, criminal or administrative proceedings, the relevant records may be disclosed to the appropriate court, magistrate, or administrative tribunal as evidence, or to counsel for the presentation of evidence and/or in the course of discovery.

(3) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Maintained in file folders and on computer discs.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in lockable metal file cabinets in a secured room; computer discs are accessed only by authorized personnel.

RETENTION AND DISPOSAL:

Permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

NOTIFICATION PROCEDURE:

Executive Secretary, FDIC, 550 17th Street, NW., Washington, D.C. 20429. Inquirers must provide their full name, the name of the bank with which they

were associated, and a notarized statement attesting to their identify.

RECORD ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual on whom the record is maintained, the employer of the individual, newspaper articles, and individuals interviewed during the investigation. Federal and State prosecuting authorities and Federal and State financial institution supervisory authorities are also sources of information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to § 310.13(a) of the FDIC's Rules and Regulations, investigatory material compiled as a part of this system for law enforcement purposes is exempted from the accounting provisions of § 310.10(d)(2) of the FDIC's Rules and Regulations and may be withheld from disclosure.

30-64-0012

SYSTEM NAME:

Financial Information System—FDIC.

SYSTEM LOCATION:

Fiscal and Facilities Management Branch, Division of Accounting and Corporate Services, FDIC, 550 17th Street, NW., Washington, D.C. 20429, and the appropriate FDIC regional offices. (See Appendix A for the location of FDIC regional offices.) Information pertaining to State or Federal tax liens bankruptices, attachments, and wage garnishments also is maintained in the Legal Division, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: ALL CURRENT AND FORMER FDIC EMPLOYEES, AND ALL INDIVIDUALS PROVIDING GOODS AND/OR SERVICES TO THE FDIC UNDER CONTRACTUAL ARRANGEMENTS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Consists of the following information on all FDIC employees: Mailing addresses and home addresses; rate and amount of pay; hours worked; leave accrued and leave balances; life insurance, health insurance, and retirement deductions; tax exemptions; and payroll deduction authorizations (including, where applicable, deductions for savings bonds, States or Federal tax liens, bankruptcies, attachments and wage garnishments which have been legally executed by the appropriate taxing or judicial authority). Record relating to employee claims for reimbursement of official travel expenses, including travel authorizations, advances, and vouchers showing amounts claimed, exceptions taken as a result of audit, advance balances applied, and amounts paid. Other records maintained on employees, where applicable, include records relating to claims for reimbursement for relocation expense including authorization, advances, vouchers showing amounts claimed and amounts paid; records pertaining to reimbursement for educational expense or professional membership dues; records relating to incentive award payments; and records relating to advances or other funds owed to the Corporation. Records on individuals who are not employees of the FDIC consist of all documents relating to the purchase of goods and/or services from those individuals including contractual documents and amounts paid.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 9 and 10(a) of the Federal Deposit Insurance Act (12 U.S.C. 1819 and 1820(a)); Exec. Order No. 9397, "Numbering System for Federal Accounts Relatiing to Individual Persons" (November 22, 1943); Travel Expense Act of 1949 (5 U.S.C. 5701–5709).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Records are periodically made available for inspection to auditors employed by the General Accounting Office.

(2) In the event that information contained in this system of records indicates a violation or potential violation of the law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may referred, as a routine use, to the appropriate agency, whether Federal or State, charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(3) In the event of litigation, the records may be presented to the appropriate court, magistrate, or administrative tribunal as evidence or to counsel for the presentation of evidence and/or in the course of discovery.

(4) Disclosure may be made to the United States Office of Personnel Management, the Merit Systems Protection Board, the Office of Special Counsel, the Federal Labor Relations Authority, an arbitrator, and the Equal Employment Opportunity Commission, to the extent disclosure is necessary to carry out the government-wide personnel management, investigatory, adjudicatory and appellate functions within their respective jurisdictions.

(5) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

(6) Disclosure may be made to the United States Treasury Department for preparations of savings bonds.

(7) Information developed form these records in routinely provided to State, City and Federal income tax authorities, including, at the Federal level, the Internal Revenue Service and the Social Security Administration, and to other recipients, as authorized by the employee, including the United States Treasury Department, savings institutions, insurance carriers, and charity funds.

(8) Disclosure may be made by the FDIC Office of Corporate Audits to vendors, carriers, or other appropriate third parties for the purpose of verification, confirmation, or substantiation during the performance of audits or investigations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folders, record cards, and computer discs.

RETRIEVABILITY:

File folders and record cards are indexed by name; computer discs are indexed by social security number or specialized identifying number.

SAFEGUARDS:

File folders and record cards are stored in lockable metal file cabinets; computer discs are accessed only by authorized personnel.

RETENTION AND DISPOSAL:

Financial payment, payroll deduction, and official travel expense and reimbursement records are retained by the FDIC for three years and then transferred to the Federal Records center or destroyed. Year-end trial balances (the individual earnings record) are retained during employment and then transferred to the Federal Records Center and maintained indefinitely. Deduction authorizations and documents used to develop payroll and employee financial records are

retained for the period of use and up to three additional years, after which they are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Accounting and Corporate Services, FDIC, 550 17th Street, NW., Washington, D.C. 20429. The appropriate FDIC regional director for records maintained in FDIC regional offices. (See Appendix A for the location of FDIC Regional Offices.) General Counsel, FDIC, 550 17th Street, NW., Washington, D.C. 20429, for records maintained by the Legal Division.

NOTIFICATION PROCEDURE:

Executive Secretary, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

RECORDS ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORDS PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

The information is obtained from the employee or person on whom the record is maintained. Where an employee is subject to a tax lien, a bankruptcy, an attachment, or a wage garnishment, information also is obtained from the appropriate taxing or judicial entity.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

30-64-0013

[Reserved]

30-64-0014

[Reserved]

30-64-0015

SYSTEM NAME:

Unofficial Personnel System—FDIC.

SYSTEM LOCATION:

Office of Personnel Management, FDIC, 550 17th Street, NW., Washington, D.C. 20429. In addition, records are maintained at the division or office levels in the FDIC Washington office, at the FDIC regional offices, and may be maintained at FDIC field offices. (See Appendix A for the location of FDIC regional offices; a list of the field offices may be obtained from the Director, Division of Bank Supervision, FDIC, 550 17th Street, NW., Washington, D.C. 20429.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former FDIC employees and applicants to and graduates of the FDIC upward mobility program.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of personnel-related records that are maintained in addition to those kept in the official personnel folder pursuant to the Federal Personnel Manual Suppl. 296-31, table 8, sec. 1. (The United States Office of Personnel Management has Privacy Act responsibility for those systems of records which are government-wide in nature and it requires agencies to maintain them. Included among these is the Official Personnel Folder. While OPM has designated the FDIC as being responsibile for disclosing to its current employees the contents of their Official Personnel Folder, notice of the existence and character of this system is published by the United States Office of Personnel Management as "General Personnel Records," OPM/GOVT-1.) This system contains records of various types. They are: (1) Records maintained in the Washington, regional, and field offices which may contain information on individuals relating to: Birth date; social security number; past and present salaries, grades, and position titles; home address and telephone number, emergency contacts, addresses and telephone numbers; employment and education experience, original applications, resumes, and letters of reference; statement of bank loans and stock ownership; record of equipment and material issued to the individual; record of leave and time-and-attendance; performance appraisals; written notes or memoranda on employee performance; counseling; employee assignments; lists of banks examined; records relating to on-the-job training; data documenting reasons for personnel actions, decisions, or recommendations made about an employee; disciplinary and adverse action backup material; claims for benefits under the Civil Service Retirement System; Federal Employees' Group Life Insurance; FDIC Employees' Group Life Insurance; documents related to on-the-job injuries; (2) parking permit records containing information (name, address, and type of automobile) about FDIC employees who have applied for (or are members of the applicants' carpool) a parking permit in the FDIC's Washington office garage; (3) FDIC personnel awards including information supporting the employees nomination for one of these awards; (4) dental insurance records including information on earnings, number and name of dependents, sex, birth date, home address, and social security number; (5) employee locator records containing the employee's name, social security number, division or office assignment, office telephone number and office room number; and (6) upward mobility program files coordinated by the FDIC Office of Personnel Management.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); sec. 506 of the Federal Records Act of 1950 (44 U.S.C. 3101). For category (6), sec. 717 of the Equal Employment Opportunity Act (42 U.S.C. 2000e-16).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

With regard to category (1) above, the records are primarily maintained to be used by the employee's supervisor for preparation of general personnel action; however, in the case of categories (1), (2), (3) and (6), disclosures may be made, where relevant:

(a) To financial and credit institutions for loan and credit reference purposes (solely to verify the employee's employment with the FDIC, date of employment, and pay grade);

(b) [Reserved];

(c) To the United States Office of Personnel Management, the Merit Systems Protection Board, the Office of Special Counsel, the Federal Labor Relations Authority, an arbitrator, and the Equal Employment Opportunity Commission, to the extent disclosure is necessary to carry out the government-wide personnel management, investigatory, adjudicatory and appellate functions within their respective jurisdiction;

(d) In the event of litigation, to the appropriate court, magistrate, or administrative tribunal as evidence, or to counsel for the presentation of evidence and/or in the course of discovery;

(e) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual;

(f) To State authorities regarding reasons for a former employee's separation from FDIC service, where the inquiry is made pursuant to the former employee's application for unemployment compensation;

(g) To Federal and State regulatory agencies, for reasons related to FDIC business, as to the temporary work location of FDIC bank examiners.

Disclosure may be made, in the case of category (4) above, to the dental insurance carrier in support of a claim for dental insurance benefits. In category (5) above, except for the employee's Social Security Number, all information in the record is available to

the public. In category (6) above, disclosure may be made to appropriate FDIC managers, supervisors and Office of Personnel Management individuals who are involved in the assessment, evaluation and selection of an applicant for upward mobility training and/or in the monitoring and evaluation of the upward mobility participant during the training period. In categories (1), (2), and (4) above, disclosure may be made by the FDIC Office of Corporate Audits to vendors, carriers, or other appropriate third parties for the purpose of verification, confirmation, or substantiation during the performance of audits or investigations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Maintained on index cards and in file folders. Category (5) is maintained on computer discs, category (6) in file folders.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in lockable metal file cabinets; computer discs are accessed only by authorized personnel.

RETENTION AND DISPOSAL:

Records are destroyed when no longer relevant to the purpose for which they were compiled and maintained. Generally, records are destroyed when the employee no longer works in the division or office which compiled and maintained the information. Parking permit records are kept for one year and then destroyed. Records of unsuccessful upward mobility candidates are retained for four years after submission; records of successful applicants are maintained until two years after leaving the employ of the FDIC.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Management, FDIC, 550 17th Street, NW., Washington, D.C. 20429, for Corporation level records. For FDIC division or office levels, the head of the approprite division or office; for FDIC regional offices, the regional director; for FDIC field offices, the field office supervisor. (See Appendix A for the location of FDIC regional offices; a list of the field offices may be obtained from the Director, Division of Bank Supervision, FDIC, 550 17th Street, NW., Washington, D.C. 20429.) For Parking Permit Records and Employee Locator Records, the Director, Division of Accounting and Corporate Services, FDIC, 550 17th Street, NW., Washington, D.C. 20429. For the upward mobility program, Director, Office of Personnel Management, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

NOTIFICATION PROCEDURE:

Executive Secretary, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

RECORD ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

Individuals to whom the records pertain; their immediate supervisors or persons at other supervisory levels; other fellow employees. For upward mobility, record source categories would include educational institutions which the applicant has attended.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

30-64-0016

SYSTEM NAME:

Municipal Securities Principals and Representatives System—FDIC.

SYSTEM LOCATION:

Operations Branch, Division of Bank Supervision, FDIC, 550 17th Street, NW., Washington, D.C. 20429. Records stored in computerized files are maintained off premises on a contract basis with the National Association of Securities Dealers, 1735 L Street, NW., Washington, D.C. 20036.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are or seek to be municipal securities principals or municipal securities representatives associated with municipal securities dealers which are FDIC-insured State-chartered banks, not members of the Federal Reserve System, or are subsidiaries, departments, or divisions of such banks.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records may contain identifying information as well as educational, employment, and disciplinary information, if any, and, where applicable, information regarding termination of employment of individuals covered by the system. Identifying information includes name, addresses, date and place of birth, and may include social security account number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 15B, 23 and 32(a) of the Securities Exchange Act of 1934, as amended (15 U.S.C. sec. 78).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used: (1) To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to the appropriate governmental authority, whether Federal, State, local, or foreign, or a self-regulatory organization, as defined in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. sec. 78c(a)(26)); (2) to refer, in the event of litigation, whether civil, criminal, or regulatory in nature, to the appropriate court, magistrate, or administrative law judge as evidence, or to counsel for the presentation of evidence and/or in the course of discovery; (3) to assist in any proceeding in which the Federal securities or banking laws are in issue or a proceeding involving the propriety of a disclosure of information contained in the information, in which the FDIC or one of its past or present employees is a party; (4) to disclose to a Federal, State, local, or foreign governmental authority or a self-regulatory organization if necessary in order to obtain information relevant to a Federal Deposit Insurance Corporation inquiry concerning a person who is or seeks to be associated with a municipal securities dealer (as such a dealer is described in "Categories of individuals covered by the system" above) as a municipal securities principal or representative; (5) to respond to a request from a Federal, State, local, or foreign government authority or a self-regulatory organization for information in connection with the issuance of a license or other benefit to the extent that such information is relevant and necessary; (6) to disclose to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual; (7) to disclose to a registered dealer, a registered broker or a registered municipal securities dealer that is a past or present employer of an individual that is the subject of a record, or to which such individual has applied for employment, for purposes of identity verification or for purposes of investigating the qualifications of the subject individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Maintained in file folders and on computer discs.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

File folders are stored in lockable metal file cabinets; computer discs are accessed only by authorized personnel.

RETENTION AND DISPOSAL:

Permanent retention with periodic review of contents of record and destruction of excess and dated information.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Bank Supervision, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

NOTIFICATION PROCEDURE:

Executive Secretary, FDIC, 550 17th Street, NW., Washington, D.C. 20429. Inquirers must provide their full name and the date and place of their birth, and may be required to include a notorized statement attesting to identity.

RECORD ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained, as well as municipal securities dealers (as such dealers are described in "Categories of individuals covered by the system" above), and Federal, State, local, and foreign governmental authorities and self-regulatory agencies which regulate the securities industry.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

30-64-0017

SYSTEM NAME:

Medical Records and Emergency Contact Information System—FDIC.

SYSTEM LOCATION:

Health Unit, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former FDIC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical record of the employee, including the date of visit to the FDIC Health Unit, the diagnosis, and the treatment administered; name and telephone number of the person to contact in the event of an emergency involving the employee; American Red Cross donor cards containing the donor's name, blood type, and dates of donations; Standard Form 78 (Certificate of Medical Examination); and Standard Form 177 (Statement of Physical Ability for Light Duty Work).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); sec. 506 of the Federal Records Act of 1950 (44 U.S.C. 3101).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

No disclosure (including intra-agency disclosure) of information contained in the medical files is made without the prior written consent of the employee concerned. In the event of an emergency, the emergency contact would be notified. For American Red Cross donor cards, disclosure of name and blood type is made only to the American Red Cross in response to specific requests for emergency donations to ensure that donor will be accepted immediately on arriving at Blood Center.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

On 8" x 10" cards with a separate emergency contact sheet attached to it. American Red Cross donor cards are stored alphabetically in wooden files in the Health Unit.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in lockable metal file cabinets in the nurse's office of the Health Unit. Only the nurse and substitute nurse are allowed access to the files. The Health Unit is locked whenever the nurse is absent.

RETENTION AND DISPOSAL:

Records are kept for the duration of the employees's tenure with the FDIC and for five years thereafter, then destroyed. Standard Forms 78 and 177 are reviewed by the FDIC Nurse. If a disability is noted, the form is kept by the nurse; otherwise, the form is destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Management, FDIC, 550 17th Street, NW., Washington D.C. 20429.

NOTIFICATION PROCEDURE:

Executive Secretary, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

RECORD ACCESS PROCEDURES:

Same as " Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

The medical records are compiled by the employee and the nurse during the course of visits to the Health Unit for treatment. The information on the emergency contact sheet is supplied by the employee.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

30-64-0018

SYSTEM NAME:

Grievance Records System—FDIC.

SYSTEM LOCATION:

Office of Personnel Management, FDIC, 550 17th Street, NW., Washington, D.C. 20429. Records at the regional level generated through grievance procedures negotiated with recognized labor organizations and arbitration are located in the FDIC regional office where originated. (See Appendix A for the location of FDIC regional offices.) Duplicate copies are maintained as records by the Office or Personnel Management for the purpose of coordinating grievance and arbitration handling.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former FDIC employees who have submitted grievances in accordance with Part 771 of the United States Office of Personnel Management's regulations (5 CFR Part 771) or a negotiated grievance procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by FDIC employees under Part 771 of the United States Office of Personnel Management's regulations, or under 5 U.S.C. 7121. These case files contain all documents related to the grievance including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the final decision, and related

correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that FDIC may establish through negotiations with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7121; 5 CFR Part 771.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used: (1) To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order, where the FDIC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) to disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested; (3) to disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to requesting agency's decision on the matter; (4) to provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual; (5) to disclose information to another Federal agency or to a court when the government is party to a judicial proceeding before the court; (6) by the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2098; (7) by the FDIC or the United States Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference; (8) to disclose information to officials of the Merit Systems Protection Board, the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, an arbitrator, or the Equal Employment Opportunity Commission when requested in performance of their authorized duties: (9) to disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding: and (10) to provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and neccessary to their duties of exclusive representation concerning personnel polices, practices and matters affecting work conditions.

POLICES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in lockable metal file cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed of three years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Management, FDIC, 550 17th Street, NW., Wshington, D.C. 20429. The appropriate FDIC regional director for records maintained in FDIC regional offices. (See Appendix A for the location of FDIC regional offices.)

NOTIFICATION PROCEDURE:

Executive Secretary, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

RECORD ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided; (1) By the individual on whom the record is maintained; (2) by testimony of witnesses; (3) by agency officials; and (4) from related correspondence from organizations or persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

Federal Deposit Insurance Corporation Regional Offices

Atlanta Regional Office, FDIC, 233 Peachtree Street, N.E., Suite 2400, Atlanta, Georgia 30043.

Boston Regional Office, FDIC, 60 State Street, 17th Floor, Boston, Massachusetts 02109.

Chicago Regional Office, FDIC, Sears Tower, 233 S. Wacker Dr., Suite 6116, Chicago, Illinois 60606.

Columbus Regional Office, FDIC, 1 Nationwide Plaza, Suite 2600, Columbus, Ohio 43215.

Dallas Regional Office, FDIC, 350 North St. Paul Street, Suite 2000, Dallas, Texas 75201.

Kansas Regional Office, FDIC, 2345 Grand Avenue, Suite 1500, Kansas City, Missouri 64108.

Madison Regional Office, FDIC, 1st Wisconsin Plaza, 1 South Pinckney St., Room 813, Madison, Wisconsin 53703.

Memphis Regional Office, FDIC, 1 Commerce Square, Suite 1800, Memphis, Tennessee 38103.

Minneapolis Regional Office, FDIC, 730 Second Avenue, South, Site 266, Minneapolis, Minnesota 55402.

New York Regional Office, FDIC, 345 Park Avenue, 21st Floor, New York, New York 10154.

Omaha Regional Office, FDIC, 1700 Farnam Street, Suite 1200, Omaha, Nebraska 68102.

Philadelphia Regional Office, FDIC, 1900 Market St., Suite 616, Philadelphia, Pennsylvania 19103.

San Francisco Regional Office, FDIC, 44 Montgomery Street, Suite 3600, San Francisco, California 94104.

By order of the Board of Directors September 20, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson

Executive Secretary.

[FR Doc. 82-26354 Filed 9-23-82; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Notice of Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8)) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their

views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include 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 that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Fedeal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated for each application.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Canadian Imperial Bank of Commerce,* Toronto, Canada and its subsidiary, Canadian Imperial Holdings, Inc., Wilmington, Delaware (leasing; New York, California, Illinois, Georgia and Pennsylvania): To engage through their subsidiary Canadian Imperial Leasing Inc., in the activity of leasing real and personal property. These activities will be conducted from offices in New York, New York, serving the states of New York, California, Illinois, Georgia and Pennsylvania. Comments on this application must be received not later than October 9, 1982.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Union Trust Bancorp,* Baltimore, Maryland (financing and insurance activities; Virginia Beach, Virginia): To engage, through its subsidiary, Landmark Financial Services, Inc., in making installment loans to individuals for personal, family or household purposes; in purchasing sales finance contracts executed in connection with the sale of personal, family or household goods or services; in acting as agent in the sale of credit life and credit accident and health insurance directly related to its extensions of credit; in acting as agent in the sale of insurance protecting collateral held against the extensions of credit; and in making second mortgage loans secured in whole or in part by mortgages or other liens on real estate. These activities would be conducted from an office located in Virginia Beach, Virginia, serving the town of Virginia Beach, Virginia and the surrounding rural area. Comments on this application must be received not later than October 18, 1982.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.,* Minneapolis, Minnesota; mortgage banking and servicing loans; Minnesota and western Wisconsin): To engage, through its subsidiary, FBS Mortgage Corporation, in the mortgage banking business, including the brokering, origination, purchase, sale and servicing of real estate mortgage loans. These activities would be conducted from an office in Roseville, Minnesota, serving the Minneapolis-Saint Paul SMSA consisting of the following counties: Anoka, Dakota, Hennepin, Ramsey, Washington, Chisago, Wright, Scott, and Carver, all in Minnesota; and St. Croix, Wisconsin. Comments on this application must be received not later than October 19, 1982.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *BankAmerica Corporation,* San Francisco, California (financing servicing, and insurance activities; expansion of geographic scope; Pennsylvania): To continue to engage, through its indirect subsidiary, FinanceAmerica Consumer Discount Company, a Pennsylvania corporation, in the activities of making or acquiring for its own account loans and other extensions of credit such as would be made or acquired by a finance company; servicing loans and other extensions of credit; and offering credit-related life insurance, credit-related accident and health insurance and credit-related property insurance. Such activities will include, but not be limited to, purchasing installment sales finance contracts, making loans and other extensions of credit to consumers as well as small businesses, making loans and other extensions of credit secured by real and personal property, and offering credit-related life, credit-related accident and health and credit-related property insurance. These activities will be conducted from an existing office located in Quakertown, Pennsylvania, serving the entire State of Pennsylvania. Comments on this application must be received not later than October 20, 1982.

Board of Governors of the Federal Reserve System, September 20, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-26307 Filed 9-23-82; 8:45 am]

BILLING CODE 6210-01-M

Eaton Capital Corp.; Proposed Acquisition of Colorado Industrial Bank

Eaton Capital Corporation, Loup City, Nebraska, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Colorado Industrial Bank, Eaton, Colorado.

Applicant states that the proposed subsidiary would engage in the activities of operating as an industrial bank and selling credit related insurance. These activities would be performed from offices of Applicant's subsidiary in Eaton, Colorado, and the geographic area to be served is Weld County, Colorado. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of §225.5(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received no later than October 20, 1982.

Board of Governors of the Federal Reserve System, September 20, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-26308 Filed 9-23-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. 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 may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Palmetto Bancshares Corporation,* Columbia, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of First Palmetto State Bank and Trust Company, Columbia, South Carolina. Comments on this application must be received not later than October 20, 1982.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Owen Financial Corporation,* Spencer, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Owen County State Bank, Spencer, Indiana. Comments on this application must be received not later than October 20, 1982.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Exchange Corp.,* Jackson, Missouri; to become a bank holding company by acquiring 80 percent of the voting shares of Jackson Exchange Bank and Trust Company, Jackson, Missouri. Comments on this application must be received not later than October 20, 1982.

2. *Smackover Bancshares, Inc.,* Smackover, Arkansas; to become a bank holding company by acquiring 80 percent of the voting shares of Smackover State Bank, Smackover, Arkansas. Comments on this application must be received not later than October 20, 1982.

3. *Missouri Delta Bancshares, Inc.,* Hayti, Missouri; to become a bank holding company by acquiring 95.3 percent of the voting shares of Missouri Delta Bank, Hayti, Missouri. Comments on this application must be received not later than October 20, 1982.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Central Dakota Bank Holding Company,* Lehr, North Dakota; to become a bank holding company by acquiring 84.88 percent of the voting shares of Central Dakota Bank, Lehr, North Dakota. Comments on this application must be received not later than October 20, 1982.

Board of Governors of the Federal Reserve System, September 20, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-26309 Filed 9-23-82; 8:45 am]

BILLING CODE 6210-01-M

[Regs. M and Z; Doc. No. R-0415]

Consumer Leasing, Truth in Lending; Order Granting Exemptions to the States of Massachusetts, Oklahoma and Wyoming

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Order.

SUMMARY: The Board has determined that the exemptions from the revised federal Truth in Lending Act requested by the states of Massachusetts, Oklahoma and Wyoming should be granted. Massachusetts sought an exemption from chapters 2 (credit transactions) and 4 (credit billing) of the act for transactions subject to the Massachusetts Truth in Lending Act; Oklahoma sought an exemption from chapters 2 and 5 (consumer leases) of the act for transactions subject to the Oklahoma Consumer Credit Code, and Wyoming sought an exemption from chapter 2 of the act for transactions subject to the Wyoming Consumer Credit Code.

EFFECTIVE DATE: October 1, 1982.

FOR FURTHER INFORMATION CONTACT: Rugenia Silver or Lynn Goldfaden, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 at (202) 452-3667 or (202) 452-3867.

SUPPLEMENTARY INFORMATION: (1) *General.* The Truth in Lending Act (15 U.S.C. 1601 *et seq.*) directs the Board to exempt from that act transactions that are subject to state laws meeting certain requirements. Under section 123 of the act, consumer credit transactions may be exempt from chapter 2 (credit transactions) if the applicable state law is substantially similar to the federal act and the state demonstrates adequate provision for enforcement. Sections 171 and 186 prescribe the same exemption standards for chapter 4 (credit billing) and chapter 5 (consumer leases), respectively, except that the Board, in making exemption determinations under those chapters, is also to consider whether the state law is more protective of the consumer.

A state law need not exactly mirror the comparable federal requirement in order to be considered substantially similar. However, any variations should be few in number and minor in nature, in order not to deprive consumers of any federal protections nor significantly complicate compliance by creditors. In measuring the adequacy of enforcement, the Board looks to whether the state requires restitution for certain violations, has adequate funding and personnel, and in other ways demonstrates a commitment to effective enforcement of its laws.

Under the original Truth in Lending Act, the Board granted exemptions to Connecticut, Maine, Massachusetts, Oklahoma and Wyoming for chapter 2. Those exemptions expire on October 1, 1982, the mandatory effective date of the Truth in Lending Act as revised by Congress in Pub. L. 96-221. Effective that date, the Board granted new exemptions to Connecticut and Main under the revised act (47 FR 36931, August 24, 1982). At the same time, the Board published notice of applications from the Sates of Massachusetts, Oklahoma and Wyoming for exemptions from the revised act (47 FR 36962, August 24, 1982). In order to assure final action on the requests by October 1, 1982, the Board requested comments by September 15, 1982.

Massachusetts requested an exemption from chapters 2 and 4 of the revised act, based on chapter 140D (consumer Credit Costs Disclosure) of the General Laws of Massachusetts, and implementing regulations (209 Code of Massachusetts Regulations section 32.00 *et seq.*). After analysis of the state law and regulations, and consideration of the state's enforcement provisions, the

Board has determined that the state of Massachusetts meets the standards for exemption and that its application should be granted as requested.

Oklahoma applied for an exemption from chapters 2 and 5 of the act, pursuant to the Oklahoma Consumer Credit Code as revised (Title 14A Oklahoma Statutes 1–101 *et seq.*) and implementing regulations. In its August notice, the Board noted one variation in the state law that limits the scope of that exemption. Because the state law and regulations contain no counterpart to §§ 132 through 135 of the federal act and § 226.12 of Regulation Z (credit card rules), an exemption from the requirements of chapter 2 does not extend to those provisions of chapter 2 relating to credit card issuance and liability. With this one execption, the Board believes that the Oklahoma statute and regulations meet the requirements for exemption and that the state has adequate provision for enforcement. Therefore, the Board has determined that the Oklahoma exemption should be granted, with the limitation noted.

Wyoming applied for an exemption from chapter 2 of the federal statute for transactions subject to the Wyoming Consumer Credit Code, as amended in 1982 (W.S. 40–14–101 through 40–14–702), and implementing regulations. In its August notice, the Board noted one significant variation in the state law relating to the term "residential mortgage transaction." That term is defined in the federal act and regulation and used in several important federal provisions, including the early disclousre rules of § 226.19, the finance charge rules in § 226.4(e), and the exceptions from the right of rescission under § 226.23. Wyoming law did not use that term, using instead terms such as "real property mortgage" that are not defined in th same manner as "residential mortgage transaction." For this reason, the Board was concerned that the coverage of the special mortgage provisions would be significantly altered under the Wyoming statute.

Since publication of the notice, the state of Wyoming has revised its statute and implementing regulations by replaceing the relevant state terms with there term "residential mortgage transaction," defined in accordance with the federal Truth in Lending Act and Regulation Z. With this change, the Board has determined that the Wyoming statute and regulation are substantially similar to the federal statute, that the state has adequate provision for enforcement, and that the exemption should be granted as requested.

By the close of the comment period, the Board had received 10 comments regarding the exemption requests. Several commenters questioned apparent discrepancies between the federal act and certain of the state laws, relating to cash discounts under section 167 of the federal act, in the case of Oklahoma and Wyoming, and the special federal rules for residential mortgage transactions, in the case of Wyoming (discussed above). Effective October 1, 1982, Wyoming and Oklahoma are adopting revisions to their rules which reflect the revised federal act and regulation. No substantive evidence was offered by commenters to cast doubt on the adequacy of the states' enforcement efforts.

In accordance with Appendix B of Regulation Z and Appendix A of Regulation M, the Board reserves the right to revoke an exemption if at any time it determines that the standards required for exemption are not being met. The state receiving an exemption undertakes to inform the Board within 30 days of any change in its relevant law or regulations. The Board will inform the appropriate state official of any revisions in the federal statute or regulation that must be adopted by the state in the future in order to maintain its exemption. Should an amendment or other revision to a state law become necessary because of a corresponding congressional or Board action, the Board will allow sufficient time to the state to revise its laws and regulations in order to preserve substantial similarity.

(2) *Order of exemption.* The following order sets forth the terms of the Massachusetts, Oklahoma and Wyoming exemptions. Notice of the exemptions will be included in the official staff commentaries on Regulations Z and M.

Order

The states of Massachusetts, Oklahoma and Wyoming have applied for exemptions from the federal Truth in Lending Act as revised on March 31, 1980 (Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96–221). Pursuant to sections 123, 171 and 186 of the act, the Board has determined that the laws of those states are substantially similar to the federal law and that there is adequate provision for enforcement of those laws. Therefore, the Board hereby grants those exemptions as follows:

Massachusetts. Effective October 1, 1982, credit transactions that are subject to chapter 140D (Consumer Credit Costs Disclosures) of the General Laws of Massachusetts, established by chapter 733 of the Acts of 1981, and its implementing regulations are exempt from chapter 2 (credit transactions) and chapter 4 (credit billing) of the federal Truth in Lending Act. This exemption does not apply to transactions in which a federally chartered institution is a creditor.

Oklahoma. Effective October 1, 1982, credit and lease transactions that are subject to the Oklahoma Consumer Credit Code (Title 14A Oklahoma Statutes 1–101 *et seq.*) and its implementing regulations are exempt from chapter 2 (credit transactions) and chapter 5 (consumer leases) of the federal Truth in Lending Act. The exemption does not apply to sections 132 through 135 of the federal act, nor does it apply to transactions in which a federally chartered institution is a creditor or lessor.

Wyoming. Effective October 1, 1982, credit transactions that are subject to the Wyoming Consumer Credit Code (W.S. 40–14–101 through 40–14–702) and its implementing regulations are exempt from chapter 2 (credit transactions) of the federal Truth in Lending Act. The exemption does not apply to transactions in which a federally chartered institution is a creditor.

By order of the Board of Governors of the Federal Reserve System, September 22, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-26549 Filed 9-23-82; 11:38 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Office of the Administrator

Advisory Board; Meeting

Notice is hereby given that the GSA Advisory Board will meet on October 4, 1982, from 10:00 a.m. to 4:45 p.m., in Room 6120, 18th and F Streets, NW, Washington, D.C. 20405. This session will be open to the public and will be devoted to discussions of organizational and management issues of current interest to GSA. The Board will also hear reports relating to the activities of its subcommittees on Facilities and Buildings Management, Supply and Distribution, Contracting, and General Management.

For further information, contact Roger C. Dierman, Deputy Associate Administrator, on (202) 523–1141.

Less then fifteen (15) days notice of this meeting is being provided due to scheduling difficulties.

Charles S. Davis III,

Associate Administrator.

September 20, 1982.

[FR Doc. 82-26305 Filed 9-23-82; 8:45 am]

BILLING CODE 6820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82N-0204]

Ethanolamine Oleate for Treating Bleeding Esophageal Varices; Invitation To Submit New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has established an Orphan Products Development office to identify and facilitate the availability of products useful in treating or diagnosing uncommon diseases. This office will also promote availability of products for common diseases where commercial sponsorship of the products is either lacking or is not totally committed to obtaining marketing approval. By this notice, the Orphan Products Development office invites submission of a new drug application (NDA) for the use of ethanolamine oleate in treating bleeding esophageal varices.

FOR FURTHER INFORMATION CONTACT: Roger Gregario, Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4903.

SUPPLEMENTARY INFORMATION: FDA will publish notices in the Federal Register inviting sponsorship of specific products when significant amounts of clinical data are available for those products. The notices will describe the available preclinical and clinical data and what additional studies, if any, may be needed for submission of an application for marketing approval.

Ethanolamine Oleate

Ethanolamine oleate has been injected into esophageal varices to treat active bleeding and to prevent rebleeding. Bleeding from esophageal varices is a common disorder. Several methods are used to reverse acute bleeding. These include tamponade with the Sengstaken-Blakemore tube, intraveneous vasopressin, emergency surgical procedures such as portacaval shunt, and sclerotherapy. All these methods have disadvantages. Use of the Sengstaken-Blakemore tube is associated with local tissue damage, which can be severe, and aspiration fatalities; rebleeding is common when the tube is removed. Intravenous vasopressin is not uniformly effective. The various surgical procedures are also associated with some failures, but, in addition, the procedures themselves result in morbidity and mortality, particularly in patients who are poor surgical risks. Indeed, emergency surgery is often not a viable option in many patients. Sclerosing agents require skill in administering and are associated, even in the most experienced hands, with esophageal necrosis, ulceration, and stenosis, although the incidence is low. Because of their high rate of effectiveness, however, and the relatively low incidence of serious adverse effects from their use and their applicability in patients who are poor surgical risks, there has been a recent resurgence of interest in the use of sclerosing agents for control of acute bleeding. Some investigators are also using these agents repetitively to obliterate the varices and prevent rebleeding.

FDA has reviewed some of the published reports on use of ethanolamine oleate specifically and other sclerotherapy in general, as well as other means of treating bleeding esophageal varices. FDA concludes there are sufficient data available in the published literature and from unpublished case report information to invite submission of an NDA for use of ethanolamine oleate in the treatment of bleeding esophageal varices. At present, data are insufficient to approve the drug for prevention of future rebleeding episodes.

Examples of published data that would help to support approval of an NDA for treatment of active bleeding from esophageal varices are as follows: Terblanche, et al., *Surgery*, 85:239, 1979; Johnston and Rodgers, *British Journal of Surgery*, 60:797, 1973; Johnson, *Annals of the Royal College of Surgery*, 59:497, 1977. In addition, Clark, A. W., et al., *Lancet*, 2:552, 1980, and Terblanche, et al., *Surgery Gynecology and Obstetrics*, 148:323, 1979, performed prospective controlled clinical trials on the effectiveness of chronic injection of ethanolamine oleate in preventing rebleeding. These trials can be used as supportive evidence for the relative safety of the drug and the procedure.

Copies of references cited above are on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

FDA is aware of a substantial amount of clinical data from two investigators in the United States who used ethanolamine oleate in acute bleeding. The investigators have agreed to make those data available to a sponsor of an NDA.

FDA would require the following information to be submitted in an NDA:

1. Manufacturing controls informations.

2. Pertinent published reports on the use of ethanolamine oleate in acute esophageal variceal bleeding.

3. Pertinent, representative, published reports on the use of other methods for control of acute bleeding, to provide comparative data on the advantages and disadvantages of the various techniques and their degree of effectiveness.

4. Case report data from the two U.S investigators. (FDA will furnish the names to potential NDA sponsors on request.)

FDA will be pleased to meet with potential sponsors to discuss the data and requirements. Manufacturers interested in submitting an NDA should contact Roger Gregorio at the address above.

Dated: September 9, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82-26181 Filed 9-23-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82M-0290]

Metrosoft Inc.; Premarket Approval of Metrosoft II™ (Polymacon) Hydrophilic Contact Lenses

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of METROSOFT II™ (polymacon) Hydrophilic Contact Lenses, sponsored by Metrosoft Inc., Austin, TX. The lenses are to be manufactured under an agreement with National Patent Development Corp., New Brunswick, NJ, which has authorized Metrosoft Inc., to incorporate by reference information contained in its approved premarket approval application for the Hydron® (polymacon) Hydrophilic Contact Lens. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and

Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by October 25, 1982.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, Bureau of Medical Devices (HFK–402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7445.

SUPPLEMENTARY INFORMATION: On April 28, 1982, Metrosoft Inc., Austin, TX, submitted to FDA an application for premarket approval of METROSOFT II™ (polymacon) Hydrophilic Contact Lenses. These lenses are indicated for daily wear for the correction of visual acuity in persons with nondiseased eyes and aphakia and have spherical ametropias and refractive astigmatism of 1.50 diopters or less. The application included authorization from the National Patent Development Corporation, New Brunswick, NJ, to incorporate by reference the information contained in its approved premarket approval application for the Hydron® (polymacon) Hydrophilic Contact Lens (Docket No. 79M–0244). The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application for this device. On August 27, 1982, FDA approved the application by a letter to the sponsor from the Acting Associate Director for Device Evaluation for the Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), soft contact lenses and solutions were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), soft contact lenses and solutions are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310) until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Bureau of Medical Devices. Contact Charles Kyper (HFK–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of approved contact lenses states that the lenses are to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that FDA approves for use with approved contact lenses. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens, under section 515(e)(1)(F) of the act (21 U.S.C. 360(e)(1)(F)). Accordingly, whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or at any other time FDA prescribes by letter to the sponsor.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 25, 1982, file with the Dockets Management Branch (address above) four copies of each petition and supporting data and information, identified with name the of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 15, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–26178 Filed 9–23–82; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 82M–0278]

Siemens Corp.; Siemens-Elema Endocardial Carbon Tipped Leads—Models 411S(Flanged) and 412S (Tined)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Siemens-Elema Endocardial Carbon Tipped Leads—Models 411S(flanged) and 412S(tined) sponsored by Siemens Corp. After reviewing the recommendations of the Circulatory System Devices Panel, FDA notified the sponsor that the application was approved because the devices had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by October 25, 1982.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, Bureau of Medical Devices (HFK–402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7445.

SUPPLEMENTARY INFORMATION: On October 31, 1980, Siemens Corp., New York, NY 10153, submitted to FDA an application for premarket approval of the Siemens-Elema Endocardial Carbon Tipped Leads—Models 411S(flanged) and 412S(tined) for use as an electrically conductive pathway between the pulse generator and the heart in patients requiring permanent pacemaker implantation. The application was reviewed by the Circulatory System Devices Panel, an FDA advisory committee, which recommended approval of the application. On August 9, 1982, FDA approved the application by letter to the sponsor from the Acting Associate Director for Device Evaluation of the Bureau of Medical Devices.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Bureau of Medical Devices. Contact Charles Kyper (HFK–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition under section 515(g) of the act (21 U.S.C. 360e(g)) for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 25, 1982, file with the Dockets Management Branch (address above), four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 14, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–26013 Filed 9–23–82; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 82N–0241]

Triethylene Tetramine Dihydrochloride for Treatment of Penicillamine-Intolerant Patients With Wilson's Disease; Invitation To Submit New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Orphan Products Development Office of the Food and Drug Administration (FDA) invites submission of a new drug application (NDA) for the use of triethylene tetramine dihydrochloride in penicillamine-intolerant patients with Wilson's Disease.

FOR FURTHER INFORMATION CONTACT: Roger Gregorio, Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4903.

SUPPLEMENTARY INFORMATION: Wilson's Disease is a rare, inherited disorder of copper metabolism that affects approximately 1,000 patients in the United States. It is characterized by progressive accumulation of copper in various body tissues, primarily the liver, brain, and iris, resulting in a wide variety of symptoms predominantly involving the liver and nervous system. The age of onset varies from early childhood to the fifth decade. Without adequate treatment it runs a progressively downhill course of neurological disability and/or hepatic failure, ending fatally within 5 years of onset. Early initiation of appropriate treatment, however, may prevent the development of symptoms; and in established disease, severe symptoms may be dramatically improved or reversed.

Effective therapy consists of aggressive chelation therapy to deplete excess copper from the body and prevent its reaccumulation. Penicillamine, an oral chelating agent, has been the drug of choice since the mid-1950's. Dr. J. M. Walshe, an authority on Wilson's Disease, has reported that approximately 10 percent of Wilson's Disease patients develop intolerance to penicillamine within a few weeks to 13 years of beginning therapy, the most serious manifestations being immune complex nephrosis and lupus erythematosus.

Triethylene Tetramine Dihydrochloride

Walshe developed a new oral chelating agent, triethylene tetramine dihydrochloride, and has reported its successful use as a life-saving alternative in more than 20 penicillamine-intolerant patients in England since 1969. The drug has also been studied by two U.S. investigators.

FDA has reviewed published reports on the use of triethylene tetramine dihydrochloride in the treatment of patients with Wilson's Disease who are intolerant of penicillamine, and a summary of data from one of the U.S. investigators. FDA finds there are sufficient data available in the published literature and unpublished case reports to invite submission of an NDA for use of triethylene tetramine dihydrochloride in treating Wilson's Disease in patients intolerant of penicillamine.

Examples of published data that would support approval of an NDA for treatment of Wilson's Disease in penicillamine-intolerant patients are as follows: Walshe, J. M., *Lancet*, 2:1401, 1969; Dubois, R. S., et al., *Lancet*, 2:775, 1970; Walshe, J. M., *Quarterly Journal of Medicine*, 167:441, 1973; Walshe, J. M., *Lancet*, 1:643, 1982; Walshe, J. M., "Story of Triethylene Tetramine Dihydrochloride" *in* "Orphan Drugs," Edited by Karsh, Marcel Dekker, Inc., NY, 1982.

Copies of references cited above are on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers

Lane, Rockville, MD 20857, and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

Dr. Walshe and the two U.S. investigators have agreed to make their detailed clinical data available to the sponsor of an NDA.

FDA would require the following information to be submitted in an NDA:

1. Manufacturing controls information.

2. Pertinent published reports on the use of triethylene tetramine dihydrochloride in penicillamine-intolerant Wilson's Disease patients.

3. Case report data from the investigators. (FDA will furnish the names of the U.S. investigators to potential NDA sponsors on request.)

FDA will not require the submission of animal toxicology data. One of the investigators and the National Center for Toxicological Research (NCTR) will be conducting subacute studies in animals. In addition, FDA is aware of completed teratology studies in mice and rats (with respect to the latter see Keen, C. L., et al., *Lancet*, 1:1127, 1982). NCTR will be conducting an additional teratology study.

FDA will not require the submission of in vivo bioavailability data for the following reasons:

1. Dosage titration is utilized in each patient to obtain the desired cupriuretic effect.

2. Under 21 CFR 320.22(e), FDA may defer or waive a requirement for submittal of in vivo bioavailability data when such action is compatible with the public health. In the United States, there are an estimated 100 patients who might benefit from this drug. Delay in approval of the NDA for patients with serious disease while a bioavailability method is under development and testing would not be compatible with protection of the public health. Furthermore, the product to be released to the public must meet the manufacturing standards already developed, and a product of this nature has been tested in patients with Wilson's Disease and found to be sufficiently bioavailable to maintain the patients in a state of clinical remission.

FDA will be pleased to meet with potential sponsors to discuss the data and requirements. Manufacturers interested in submitting an NDA should contact Roger Gregorio at the address above.

Dated: September 9, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82-26182 Filed 9-23-82; 8:45 am]

BILLING CODE 4160-01-M

lth Resources and Services inistration

Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1982:

Name: National Advisory Council on Health Professions Education.

Date and Time: November 8-9, 1982, 9:00 a.m.-5:30 p.m.

Place: Conference Room G-20, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782.

Meeting open to the public.

Purpose: The Council advises the Secretary with respect to the administration of programs of financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance. This also involves advice in the preparation of regulations with respect to policy matters.

Agenda: The meeting will cover: welcome and opening remarks; report of the Administrator; budget update; discussion on resolution regarding Humanistic Health Care; update of Department's goals for Health Promotion and Disease Prevention; and future agenda items.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Mr. Robert L. Belsley, Executive Secretary, National Advisory Council on Health Professions Education, Bureau of Health Professions, Health Resources Administration, Room 4-27, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-6564.

Agenda items are subject to change as priorities dictate.

Dated: September 15, 1982.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 82-26363 Filed 9-23-82; 8:45 am]

BILLING CODE 4160-15-M

Office of the Secretary

President's Council on Physical Fitness and Sports; Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Council on Physical Fitness and Sports. This notice also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act.

DATE: September 24, 1982, 9:00 a.m. to 3:00 p.m.

ADDRESS: Capitol (House side) Rm. H-130, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. C. Carson Conrad, Executive Director, President's Council on Physical Fitness and Sports, 450 5th St., NW., Suite 7103, Washington, D.C. 20001.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports operates under Executive Order 12345 dated February 2, 1982. The functions of the Council are: (1) To recommend to the President and the Secretary of HHS as necessary, steps to accelerate carrying out provisions of the Executive Order and (2) Advise the Secretary on matters pertaining to ways and means of enhancing opportunities for participation in physical fitness and sports activities and on state, local, and private action to extend and improve physical activity programs and services.

The Council will hold this meeting to apprise the new Council members of the 9-point national program of physical fitness and sports; to report on on-going Council programs; and to plan future directions.

Dated: September 17, 1982.

C. Carson Conrad,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 82-26301 Filed 9-23-82; 8:45 am]

BILLING CODE 4160-17-M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on September 17.

Public Health Service

National Institutes of Health

Subject: Health Message Testing Service—Print Component—New (Resubmission).

Respondents: Individuals.

Subject: Biomedical Research Support Grant Application and Annual Progress Report (0925-0008)—Extension.

Respondents: Universities, hospitals and research institutes.

OMB Desk Officer: Richard Eisinger.

Health Care Financing Administration

Subject: Integrated Quality Control Review Schedule (HCFA-301)—Revision.

Respondents: State Medicaid agencies.

Subject: Integrated Quality Control Review Worksheets (HCFA-316)—Revision.

Respondents: State Medicaid agencies and Medicaid recipients.

OMB Desk Officer: Fay S. Iudicello.

Social Security Administration

Subject: Quarterly Report of Child Support Enforcement Activities Under Title IV-D of the Social Security Act (OCSE-3 (8-82))—Revision.

Respondents: State or local governments.

OMB Desk Officer: Milo Sunderhauf.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to both the HHS Reports Clearance Officer and the appropriate OMB Desk Officer designated above at the following addresses:

J. J. Strnad, HHS Reports Clearance Officer, Hubert H. Humphrey Building, Room 524-F, Washington, D.C. 20201

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attn: (name of OMB Desk Officer)

Dated: September 17, 1982.

Dale W. Soper,

Assistant Secretary for Management and Budget.

[FR Doc. 82-26227 Filed 9-23-82; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of Pinyon Final Environmental Impact Statement

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 and the 1975 Federal Court Order, the Bureau of Land Management (BLM) has prepared a final grazing management environmental impact statement (EIS) for the Pinyon Planning Unit rangeland management program in portions of Beaver, Iron, Millard and Washington Counties of southwestern Utah.

The Final EIS examines five alternative management programs: (1) Continuation of Current Management (No Action), (2) Planning Recommendations, (3) Livestock Grazing Preference, (4) Resident Resource Values, and (5) Livestock Maximization. The alternatives examine varied levels of livestock grazing (from 60,757 animal unit months [AUMs] to 209,006 AUMs) wildlife forage (from 2,663 AUMs to 8,345 AUMs), and wild horse forage (from 0 AUMs to 12,825 AUMs). Varying levels of vegetation treatment and management intensity would accompany the different alternatives.

Copies of the EIS are available at the Cedar City District Office, 1579 North Main, P.O. Box 724, Cedar City, Utah 84720, (801) 586-2401 and the Beaver River Resource Area Office, 444 South Main, Suite C-3, Cedar City, Utah 84720, (801) 586-2458. Public reading copies of the Final EIS will be available for review at the following locations: Office of Public Affairs, Bureau of Land Management, Interior Building, 18th and C Streets, NW., Washington, D.C. 20240, and Utah State Office, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Written comments on the Final EIS should be submitted to the Cedar City District Manager by October 29, 1982.

Morgan S. Jensen,

District Manager.

September 16, 1982.

[FR Doc. 82-26302 Filed 9-23-82; 8:45 am]

BILLING CODE 4310-84-M

[F-19155-10]

Alaska; Alaska Native Claims Selection

On April 2, 1975, Doyon, Limited, filed selection application F-19155-10, as amended, under the provisions of Sec. 12(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611(c) (1976)) (ANCSA), as amended, for the surface and subsurface estates of certain lands withdrawn pursuant to Sec. 11(a)(1) for the Native village of Ruby. The application excluded Deer Creek and Big Creek as being navigable. As these are considered nonnavigable and as Sec. 12(c)(3) of ANCSA and Departmental regulation 43 CFR 2652.3(c) require the region to select all available lands within the township, the beds of these water bodies are considered selected.

As to the lands described below, the application, as amended, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act, as amended, and of the regulations issued pursuant thereto. These lands do not include any lawful entry prefected under or being maintained in compliance with laws leading to acquistion of title.

In view of the foregoing, the surface and subsurface estates of the following described lands, selected pursuant to Sec. 12(c) of ANCSA, as amended, aggregating approximately 192,521 acres, are considered proper for acquisiton by Doyon, Limited, and are hereby approved for conveyance pursuant to Sec. 14(e) of ANCSA:

Kateel River Meridian, Alaska (Surveyed)

T. 7 S., R. 15 E.,
Secs. 1 to 36, inclusive.
Containing 22929.12 acres.

T. 9 S., R. 15 E.,
Secs. 19 to 36, inclusive.
Containing approximately 11,219 acres.

T. 11 S., R. 15 E.,
Secs. 1 to 36, inclusive.
Containing 22,931.04 acres.

T. 8 S., R. 16 E.,
Sec. 1;
Sec. 4, excluding Native allotment F-14475;
Secs. 5 to 9, inclusive;
Secs. 15 to 18, inclusive;
Secs. 22 and 23.
Containing approximately 8,252 acres.

T. 10 S., R. 16 E.,
Secs. 1 to 36, inclusive.
Containing 22,858.32 acres.

T. 7 S., R. 17 E.,
Secs. 3 to 10, inclusive;
Sec. 13;
Secs. 16 to 19, inclusive;
Secs. 23 to 27, inclusive;
Secs. 33 to 36, inclusive.
Containing 13,997.87 acres.

T. 11 S., R. 17 E.,
Sec. 1;
Sec. 11 to 14, inclusive;
Secs. 23 to 26, inclusive;
Secs. 35 and 36.
Containing 7,040 acres.

T. 8 S., R. 18 E.,
Sec. 1;
Secs. 11 to 16, inclusive;
Secs. 20 to 29, inclusive;
Secs. 31 to 36, inclusive.
Containing 14,718.97 acres.

T. 10 S., R. 18 E.,
Secs. 1 to 36, inclusive.
Containing 22,858.32 acres.

T. 9 S., R. 19 E.,
Secs. 1 to 36, inclusive.
Containing 22,785.60 acres.

T. 11 S., R. 19 E.,
Secs. 1 to 36 inclusive.
Containing 22,931.04 acres.
Aggregating approximately 192,521 acres.

Excluded from the above-described lands herein approved for conveyance are the submerged lands, up to the ordinary high water mark, beneath all water bodies determined by the Bureau of Land Management to be navigable

because they have been or could be used in connection with travel, trade and commerce. Those water bodies are identified on the attached navigability maps, the original of which will be found in easement case file F–21779–10.

All other water bodies not depicted as navigable on the attached maps within the lands to be conveyed were reviewed. Based on existing evidence, they were determined to be nonnavigable.

The land excluded in the above description is not being approved for conveyance at this time and has been excluded for the following reason: Land is under application pending further adjudication. This exclusion *does not* constitute a rejection of the selection application.

The conveyance issued for the surface and subsurface estates of the lands described above shall contain the following reservation to the United States:

Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)), as amended, the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F–21779–10, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, and small all-terrain vehicles (less than 3000 lbs. Gross Vehicle Weight (GVW)).

50 Foot Trail—The uses allowed on a fifty (50) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, small and large all-terrain vehicles, track vehicles and four-wheel drive vehicles.

a. (EIN 11a C5, L) An easement fifty (50) feet in width for an existing access trail from Sec. 31, T. 7 S., R. 16 E., Kateel River Meridian, southwesterly to public land. The uses allowed are those listed for a fifty (50) foot wide trail easement.

b. (EIN 11b C5, L) An easement fifty (50) feet in width for a proposed access trail from public land in Sec. 36, T. 10 S., R. 17 E., Kateel River Meridian, southeasterly to public land. The uses allowed are those listed for a fifty (50) foot wide trail easement.

c. (EIN 22 C5) An easement fifty (50) feet in width for a proposed access trail from public land in Sec. 1, T. 10 S., R. 15 E., Kateel River Meridan, northeasterly to public land. The uses allowed are those listed for a fifty (50) foot wide trail easement.

d. (EIN 23 C5) An easement fifty (50) feet in width for a proposed access trail from public land in Sec. 6, T. 11 S., R. 16 E., Kateel River Meridan, northwesterly to public land. The uses allowed are those listed for a fifty (50) foot wide trail easement.

e. (EIN 27 C4) An easement twenty-five (25) feet in width for a proposed access trail from public land in Sec. 1, T. 9 S., R. 18 E., Kateel River Meridan, easterly to public land. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

f. (EIN 35 C5) An easement twenty-five (25) feet in width for a proposed access trail from public land in Sec. 1, T. 11 S., R. 18 E., Kateel River Meridan, northeasterly to public land. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

g. (EIN 36 C5) An easement twenty-five (25) feet in width for a proposed access trail from public land in Sec. 6, T. 10 S., R. 19 E., Kateel River Meridan, northwesterly to public land. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official supplemental plat of survey confirming the boundary description and acreage of the lands hereinabove granted; and

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), as amended, any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law.

To date, approximately 4,039,473 acres of land, selected pursuant to Sec. 12(c) of ANCSA, have been approved for conveyance to Doyon, Limited.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner.

Any party claiming a property interest in lands affected by this decision, an agency fo 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 attached regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised. However, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (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 99501.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until October 25, 1982, 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 ANCSA and State Conveyances.

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, 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: Doyon, Limited, Land Department, Doyon Building, 201 First Avenue, Fairbanks, Alaska 99701.

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82–26339 Filed 9–23–82; 8:45 a.m]

BILLING CODE 4310–84–M

[F-14837-A]

Alaska; Alaska Native Claims Selection

On December 16, 1974, Beaver Kwit'chin Corporation filed selection application F-14837-A under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611 (1976)) (ANCSA), as amended, for the surface estate of certain lands in the vicinity of Beaver.

As to the lands described below, the application is properly filed and meets the requirements of ANCSA, as amended, and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In views of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, as amended, aggregating approximately 81,235 acres is considered proper for acquisition by Beaver Kwit'chin Corporation, and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA.

Fairbanks Meridian, Alaska (Unsurveyed)

T. 18 N., R. 1 E.,
Sec. 13, excluding Native allotment F-13993 Parcel B;
Sec. 14, excluding Native allotments F-13422 and F-13993 Parcels A and B;
Sec. 15, excluding Native allotment F-13993 Parcel A;
Sec. 22, excluding Native allotment F-13416;
Sec. 23, excluding Native allotments F-13422, F-13416, and F-14366 Parcel C;
Sec. 24;
Sec. 25, excluding U.S. Survey No. 3798;
Secs. 26 to 33, inclusive;
Sec. 34, excluding Native allotment F-026096;
Sec. 35, excluding Native allotment F-14377 Parcel B;
Sec. 36, excluding Native allotment F-026102.
Containing approximately 9,555 acres.
T. 17 N., R. 2 E.
Secs. 1 to 10, inclusive;
Secs. 11 to 14, inclusive, excluding Native allotment F-13420;
Secs. 15 to 24, inclusive.
Containing approximately 12,315 acres.
T. 18 N., R. 2 E.,
Sec. 1, excluding Native allotment F-14655 Parcel A;
Secs. 2 to 6, inclusive;
Sec. 7, excluding Native allotment F-13992 Parcel A;
Sec. 8, excluding Native allotments F-13996 Parcel B and F-13994 Parcel C;
Secs. 9 to 14, inclusive;
Sec. 15, excluding Native allotments F-13996 Parcel A and F-13992 Parcel B;
Sec. 16, excluding Native allotment F-13992 Parcel B;
Sec. 17, excluding Native allotment F-13994 Parcel C;
Sec. 18, excluding Native allotment F-13992 Parcel A;
Sec. 19, excluding U.S. Survey No. 3798 and Native allotment F-13994 Parcel B;
Sec. 20, excluding U.S. Survey No. 3798, and Native allotments F-13418 and F-13994 Parcel B;
Sec. 21, excluding Native allotment F-13992 Parcel B;
Secs. 22 to 27, inclusive;
Sec. 28, excluding Native allotment F-13418;
Sec. 29, excluding U.S. Survey No. 3798, U.S. Survey No. 4895, and Native allotments F-13994 Parcel B and F-13418;
Sec. 30, excluding U.S. Survey No. 3798, U.S. Survey No. 4895, and Alaska Native Claims Settlement Act Sec. 3(e) application F-36743;
Secs. 31 to 36, inclusive.
Containing approximately 17,875 acres.
T. 18 N., R. 3 E.
Secs. 1 and 2;
Secs. 3 and 4, excluding Native allotment F-14411 Parcel A;
Secs. 5 to 20, inclusive;
Secs. 21 and 22, excluding Native allotments F-12014 and F-026101;
Secs. 23 to 26, inclusive;
Secs. 27 and 28, excluding Native allotments F-12014 and F-026101;
Secs. 29 and 30;
Sec. 31, excluding Native allotment F-12016 Parcel B;
Secs. 32 to 36, inclusive.
Containing approximately 17,617 acres.
T. 19 N., R. 4 E.,
Secs. 1 to 7, inclusive;
Sec. 8, excluding Native allotment F-026098;
Secs. 9 to 14, inclusive;
Sec. 15, excluding Native allotments F-14730 and F-12015 Parcel C;
Sec. 16, excluding Native allotments F-14730 and F-12015 Parcel B;
Sec. 17, excluding Native allotments F-12015 Parcel B and F-026098;
Secs. 18, 19, and 20.
Secs. 21 and 22, excluding Native allotment F-14730;
Secs. 23 to 36, inclusive.
Containing approximately 17,748 acres.
T. 16 N., R. 1 W.,
Secs. 1 to 12, inclusive.
Containing approximately 6,125 acres.
Aggregating approximately 81,235 acres.

Excluded from the above-described lands herein approved for conveyance are the submerged lands up to the ordinary high water mark, beneath all water bodies determined by the Bureau of Land Management to be navigable because they have been or could be used in connection with travel, trade and commerce. Those water bodies are identified on the attached navigability maps, the original of which will be found in easement case file F-14837-EE.

All other water bodies not depicted as navigable on the attached maps within the lands to be conveyed were reviewed. Based on existing evidence, they were determined to be nonnavigable.

The lands excluded in the above description are not being approved for conveyance at this time and have been excluded for the following reasons: Lands are no longer under Federal jurisdiction; lands are under applications pending further adjudication; or lands are pending a determination under Sec. 3(e) of ANCSA. Lands within U.S. Surveys which are excluded are described separately in this decision if they are available for conveyance. These exclusions *do not* constitute a rejection of the selection application, unless specifically so stated.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(f)), as amended; and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)), as amended the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F-14837-EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (ATV's) (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

One Acre Site—The uses allowed on a one (1) acre site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours

a. (EIN 15 D9) An easement twenty-five (25) feet in width for an existing access trail from public lands in Sec. 32, T. 20 N., R. 3 E., Fairbanks Meridian, southerly to Beaver and then on to public lands south of Beaver. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter.

b. (EIN 16 C5) An easement twenty-five (25) feet in width for an existing access trail from the village of Beaver in Secs. 29 and 30, T. 18 N., R. 2 E.,

Fairbanks Meridian, southeasterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

c. (EIN 20 D1) An easement twenty-five (25) feet in width for an existing access trail from trail easement EIN 15 D9 in Sec. 20, T. 18 N., R. 2 E., Fairbanks Meridian, northwesterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

d. (EIN 25 E) An easement twenty-five (25) feet in width for a proposed access trail from trail easement EIN 20 D1 in Sec. 31, T. 19 N., R. 2 E., Fairbanks Meridian, southwesterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter.

e. (EIN 26a E) An easement twenty-five (25) feet in width for a proposed access trail from site easement EIN 26b E in Sec. 6, T. 18 N., R. 3 E., Fairbanks Meridian, northwesterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

f. (EIN 26b E) A one (1) acre site easement upland of the ordinary high water mark in Sec. 6, T. 18 N., R. 3 E., Fairbanks Meridian, on the right bank of Jack Uheen Slough. The uses allowed are those listed above for a one (1) acre site easement.

g. (EIN 27a E) A one (1) acre site easement upland of the ordinary high water mark in Sec. 27, T. 18 N., R. 1 E., Fairbanks Meridian, on the right bank of Joe Guay Slough. The uses allowed are those listed above for a one (1) acre site easement.

h. (EIN 27b E) An easement twenty-five (25) feet in width for a proposed access trail from Joe Guay Slough in Sec. 27, T. 18 N., R. 1 E., Fairbanks Meridian, northwesterly to public land. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official plat of survey confirming the boundary description and acreage of the lands hereinabove granted;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), as amended, any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law; and

3. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(c)), as amended, that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Beaver Kwit'chin Corporation is entitled to conveyance of 92,160 acres of land selected pursuant to Sec. 12(a) of ANCSA. The total acreage conveyed or approved for conveyance is approximately 81,235 acres. The remaining entitlement of approximately 10,925 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA and Departmental regulation 43 CFR 2652.4, conveyance of the subsurface estate shall be issued to Doyon, Limited when the surface estate is conveyed to Beaver Kwit'chin Corporation, and shall be subject to the same conditions as the surface conveyance, except for those provisions under Sec. 14(c) of ANCSA; also the right to explore, develop, or remove mineral materials from the subsurface estate in lands within the boundaries of the Native village of Beaver shall be subject to the consent of Beaver Kwit'chin Corporation.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the FAIRBANKS DAILY NEWS-MINER.

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 attached regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised. However, pursuant to Pub. L. 96-487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANSCA and State Conveyances (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 shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until October 25, 1982, 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 ANCSA and State Conveyances.

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 an appeal may be obtained from the Bureau of Land Management, 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:

Beaver Kwit'chin Corporation, Beaver, Alaska 99724

Doyon, Limited, Land Department, Doyon Building, 201 First Avenue, Fairbanks, Alaska 99701

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82-26340 Filed 9-23-82; 8:45 am]

BILLING CODE 4310-84-M

Wyoming; Grazing Management in the Grass Creek Resource Area; Availability of Final Environmental Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of final environmental impact statement.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management, U.S. Department of the Interior, has prepared a final environmental impact statement on grazing management in portions of Park, Hot Springs, Big Horn and Washakie Counties, Wyoming, and has made copies of the document available for public review and comment.

The Bureau of Land Management proposes to continue to allow livestock

grazing on 966,000 acres of public land in the Grass Creek Resource area, Worland District, Wyoming. The proposal is to manage grazing allotments at different levels of intensity to maintain present conditions, improve present conditions or prevent deterioration of present conditions. Proposed actions include changing grazing treatments and seasons of use, adjustments in use levels, and providing additional grazing management facilities and land treatments. Four alternatives (No Change, No Livestock Grazing, Optimize Livestock Grazing and Manage for Other Than Grazing Use) are analyzed along with the proposed action. The affected environment is described, and the environmental impacts are documented.

FOR FURTHER INFORMATION CONTACT: John Moorhouse, Team Leader, Bureau of Land Management, Box 119, Worland, Wyoming 82401, telephone (307) 347–6151.

Paul M. Andrews,

District Manager.

[FR Doc. 82–76370 Filed 9–23–82; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications

The applicants listed below wish to conduct certain activities with endangered species:

Applicant: Miami-Metrozoo, Miami, FL—PRT 2–9648

The applicant requests a permit to import two male and three female captive-bred Eld's deer (*Cervus eldi*) from the Leipzing Zoological Garden, German Democratic Republic for enhancement of propagation.

Applicant: Tennessee Valley Authority, Knoxville, TN—PRT 2–9575

The applicant request an amendment to his permit to allow the take of any endangered mussel species encountered in the Duck River while collecting *Conradilla caelata*. TVA would hold these specimens in a secure location until issues surrounding Columbia Reservoir are resolved.

Humane care and treatment during transport, if applicable, has been indicated by the applicants.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: September 21, 1982.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 82–26393 Filed 9–23–82; 8:45 am]

BILLING CODE 4310–55–M

Endangered Species Permits Issued for the Month of August 1982

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to permit applications duly received according to Section 10 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539. Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Additional information on these permit actions may be requested by contacting the Federal Wildlife Permit Office, Box 3654, Arlington, VA 22203, telephone (703/235–1903) or by appearing in person at the Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 605, Arlington, VA, between the hours of 9:00 a.m. and 3:00 p.m. weekdays.

National Zoo X6400 August 5
Athens Field Station X9263 August 19
Ecosearch X9356 August 23
Dr. Howard Shellhammer X9368 August 19
University of WI X9392 August 23
Dr. Robert Menzies—NOVA X9393 August 23

Dated: September 20, 1982.

Larry LaRochelle

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 82–26394 Filed 9–23–82; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Kerr-McGee Corporation has submitted a Development and Production Plan describing the activities it proposes to conduct on leases OCS–G 1528 and 3169, Blocks 233 and 238, Ship Shoal Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisians 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: September 10, 1982.

John L. Rankin,

Acting Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82–26300 Filed 9–23–82; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Gates of the Arctic National Park and Preserve, Alaska; Addition of Kurupa Lake and Adjoining Lands to the Park

Correction

In FR Doc. 82–21921 appearing on page 35041 in the issue for Thursday, August 12, 1982, second column, in the land description for Kateel River Meridian, second line, "(S½, and W½ of NW¼)" should read "(S½, and W½ of NW¼)".

BILLING CODE 1505–01–M

INTERSTATE COMMERCE COMMISSION

[Volume No. 13]

Motor Carriers; Applications, Alternate Route Deviations, and Intrastate Applications

Motor Carrier Alternate Route Deviations; Notice

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Passengers (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of this **Federal Register** notice.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Passengers

MC 61599 (Deviation No. 16), TRAILWAYS SOUTHEASTERN LINES, INC., 1500 Jackson Street, Dallas, TX 75201, filed September 8, 1982. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From Ft. Jackson, SC over US Hwy 378 to Sumter, SC, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over a pertinent service route as follows: From Ft. Jackson, SC over SC Hwy 12 to junction US Hwy 601, then over US Hwy 601 to Camden. From Camden over US Hwy 521 to junction SC Hwy 12, then over SC Hwy 12 to the Kershaw-Sumter County line, then over SC Hwy 43 to Sumter-Lee County line, then over SC Hwy S–31–88 to the Lee-Sumter County line, then over SC Hwy 43 to junction US Hwy 521, then over US Hwy 521 to Sumter, SC, and return over the same route.

MC 61599 (Deviation No. 17), TRAILWAYS SOUTHEASTERN LINES, INC., 1500 Jackson Street, Dallas, TX 75201, filed September 13, 1982. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express* and *newspapers* in the same vehicle with passengers, over a deviation route as follows: From Orangeburg SC over US Hwy 21 to its junction with Interstate Hwy 95, then over Interstate Hwy 95 to junction US Hwy 17, then over US Hwy 17 to Ridgeland, SC, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over a pertinent service route as follows: From Orangeburg, SC over SC Hwy 601 to Hampton, SC, then over US Hwy 278 to Ridgeland, SC, and return over the same route.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–26316 Filed 9–23–82: 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries about the following to Team 1, (202) 275–7992.

Volume No. OP1–159

Decided: September 20, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler and Fortier. Member Parker not participating.

MC 128270 (Sub-53), filed August 16, 1982. Applicant: REDIEHS EXPRESS, INC. 1477 Ripley Street, Lake Station, IN 46405. Representative: Richard A. Kerwin, 180 North La Salle Street, Chicago, IL 60601–2897, (312) 332–5106. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 163680 (Sub-1), filed September 3, 1982. Applicant: TRANSPORT AMERICA, INC., 808 S. Joliet Street, Joliet, IL 60436. Representative: James C. Hardman, 33 N. LaSalle Street, Chicago, IL 60602, (312) 236–5944. Transporting *general commodities*, between Dillsburg,

Gifford, Penfield, Potomac and Armstrong, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI). Conditions: (1) To the extent that any certificate issued in this proceeding authorizes the transportation of explosives, it shall expire 5 years from its date of issuance; and (2) The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343 or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the applications for common control to team 1, room 2426.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

Please direct status inquiries about the following to Team 2 (202) 275–7030.

Volume No. OP2–228

Decided: September 16, 1982.

By the Commission, Review Board Number 1, Members Parker, Chandler and Fortier.

MC 163802, filed September 10, 1982. Applicant: A. L. LOPEMAN TRUCKING, P.O. Box 68, 105 E. Henry St., Atkinson, IL 61235. Representative: A. L. Lopeman (same address as applicant) 309–936–7982. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle, in such vehicle, between points in the U.S. (except AK and HI).

Please direct status inquiries about the following to Team 4 (202) 275–7669.

Volume No. OP4–336

Decided: September 17, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams and Ewing.

W 1347 (Sub-1), filed August 30, 1982. Applicant: CARGO CARRIERS, INCORPORATED, P.O. Box 9300, Minneapolis, MN 55440. Representative: Gerald W. Brown, (same address as applicant) (612) 475–6756. To operate as a *contract carrier*, by water, by non-self-propelled vessels with the use of separate towing vessels in the transportation of *steel and metal articles*, between ports and points along inland waterways between Minneapolis, MN, Houston, TX, and Tulsa, OK, under continuing contract(s) with North Star Steel Company, of Minneapolis, MN.Conditions: (1) This is a major regulatory action and requires preparation of a statement of energy impact under the provisions of 49 CFR 1106.5(a)(8). Accordingly, applicant must submit the information required by 49 CFR 1106.7(a). Upon submission of such information, an appropriate statement of energy impact will be prepared; and (2) This application contemplates operations which should result in decreased energy consumption in comparison with existing energy consumption in the affected area. To the extent traffic will be diverted from existing transportation modes, greater energy efficiencies may be obtained without disruption to existing patterns of energy distribution or to development of energy resources. The application is, in all respects, consistent with prevailing goals and objectives of the National Energy Policy.

W 1356, filed August 24, 1982, previously noticed in the **Federal Register** issue of September 14, 1982, and republished this issue. Applicant: CONSOLIDATED GRAIN AND BARGE COMPANY, 101 Merchants Exchange Bldg., 5100 Oakland Ave., St. Louis, MO 63110. Representative: Peter A. Greene, 1920 N St., N.W., Suite 700, Washington, DC 10026, (202) 331–8800. Transporting, by water, by non-self-propelled vessels with the use of separate towing vessels, *general commodities*, and by towing vessels in the performance of *general towage*, between ports and points on the Cumberland, Tennessee, Ohio, Missouri, Mississippi, Arkansas, Mobile, Alabama, Tombigbee, Black Warrior, and Illinois Rivers; the Illinois Waterway; Lake Michigan between Chicago, IL and Burns Harbor, IN; the Gulf of Mexico and the Gulf Intracoastal Waterway between Brownsville, TX and Apalachicola, FL, and tributary and connecting waterways and channels.

Note.—The purpose of this republication is to correct the commodity description.

MC 150927 (Sub-3), filed September 3, 1982. Applicant: HORIZON TRANSPORT, INC., P.O. Box 20848, Portland, OR 97220. Representative: Michael D. Crew, 1618 SW 1st Ave., Suite 205, Portland, OR 97201, (503) 221–1529. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 151067 (Sub-2), filed September 3, 1982. Applicant: TWILIGHT TRUCKING, LTD., 4303—78 Ave., Edmonton, Alberta, Canada T6B 2N3. Representative: Dale G. Thiessen, (same address as applicant) (403) 468–4082. Transporting *detergents*, between the ports of entry on the International Boundary line between the U.S. and Canada in MT, ID, and WA, on the one hand, and, on the other, points in CA, OR, WA, and TX.

MC 152447 (Sub-1), filed September 3, 1982. Applicant: OPIES' MILK HAULERS, INC., Highway 52 West, P.O. Box 89, Eldon, MO 65026. Representative: James C. Swearengen, P.O. Box 456, Jefferson City, MO 65102, (314) 635–7166. Transporting *commodities in bulk*, between points in Jasper County, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 162417, filed September 1, 1982. Applicant: NAAMAN GERSHOWITZ, INC., Aden Rd., Liberty, NY 12754. Representative: George Gershowitz, (same address as applicant), (914) 292–4485. Transporting *passengers and their baggage*, in special and charter operations, in round-trip sightseeing and pleasure tours, beginning and ending at points in Sullivan County, NY, and extending to points in NJ, CT, MA, and PA.

MC 163687, filed September 2, 1982. Applicant: ALL SOUTHERN TRANSPORT, INC., 307 N.W. 3rd St., Ocala, FL 32670, Representative: Frank C. Amatea, P.O. Box 1147, Ocala, FL 32678, (904) 732–4740. Transporting *General Commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Kimco of Ocala, Inc., of Ocala, FL.

MC 163707, filed September 2, 1982. Applicant: DIRECT CARTAGE CO., INC., P.O. Box 29014, 11311 Stemmons Freeway, Dallas, TX 75229, Representative: Thomas J. O'Brien, 234 Mt. Pleasant Ave., Ambler, PA 19002, (215) 646–6220. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in LA, OK, and TX, under continuing contract(s) with Intermodal Brokerage Services Inc., of Norcross, GA.

Volume No. OP4–337

Decided: September 17, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams and Ewing.

MC 163657, filed August 31, 1982. Applicant: CROWN MOVING COMPANY, INC., 6858 South 220th St., Kent, WA 98032. Representative: Michael R. Ginnaty (Same address as applicant) (206) 872–7012. Transporting *used household goods* for the account of the United States Government incident to the performance of a Pack-and-crate service on behalf of the Department of Defense, between points in the U.S. (except AK and HI).

MC 163546, filed August 25, 1982. Applicant: TRARA BROKERS, INC., 1340 Forest Parkway, Lake City, GA 30052. Representative: William Glisson (same Address as applicant) (404) 363–1539. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Please direct status inquiries about the following to team 5 (202) 275–7289.

Volume No. OP5–189

Decided: September 9, 1982.

By the Commission, Review Board Number 3, Members Krock, Joyce and Dowell.

MC 31498 (Sub-4), filed September 2, 1982. Applicant: K&T AIR FREIGHT, INC., 16525 Eastland St., Roseville, MI 48066. Representative: Robert E. McFarland, 2855 Coolidge Rd., Ste. 201A, Troy, MI 48084, (313) 649–6650. (1) Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), (2) transporting *shipments weighing 100 pounds* of less if transported in a motor vehicle in which no one package exceeds 100 pounds, (3) *food and other edible products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, and (4) *use household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S. (except AK and HI)

MC 163619, filed September 2, 1982. Applicant: EXECUTIVE AIR COURIER, INC., d.b.a. NATIONAL EXPEDITED DATA EXPRESS, 7610 Bristol Pike, Levittown, PA 19057. Representative: Wilmer B. Hill, Suite 366, 1030 Fifteenth St., NW., Washington, DC 20005, (202) 296 5188. Transporting *shipments weighing 100 pounds or less,* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

Volume No. OP5–191

Decided: September 14, 1982.

By the Commission. Review Board No. 3, members Krock, Joyce and Dowell.

MC 163678, filed September 2, 1982. Applicant: EDWARD R. BEACHY d.b.a. BEACHY TRUCKING, P.O. Box 256 RR 4, Honey Brook, PA 19344. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956, 414–722–2848. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 163638, filed August 30, 1982. Applicant: LAND–LINK TRANSPORTATION, INC., d.b.a., LAND–LINK TRAFFIC SYSTEM, P.O. Box 1516, Point Pleasant Beach, NJ 08742. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, 201–572–5551. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 163648, filed August 31, 1982. Applicant: TDP, INC. d.b.a., TRI CITY VAN & STORAGE OF LOUISVILLE, 9901 Callie Dr., Fairdale, KY 40118. Representative: Terry Ray Powers, (same address as applicant), 502–582–1689. Transporting *used household goods,* for the account of the United States Government, incident to the performance of a pack-and-crate service, on behalf of the Department of Defense, between points in the U.S.

MC 163688, filed September 2, 1982. Applicant: FREIGHT SAVERS, INC., 3104 NE 71st Terr., Kansas City, MO 64119. Representative: Arthur J. Cerra, 2100 CharterBank Center, P.O. Box 19251, Kansas City, MO 64141, 816–842–8600. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–26365 Filed 9–23–82; 8:45 am]

BILLING CODE 7035–01–M

[Amendment No. 3]

Section 5a (49 U.S.C. 10706) Application No. 106; Household Good Forwarders Tariff Bureau Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional approval of amendment.

SUMMARY: Provisional approval under the tenets of 49 U.S.C. 10706(c) of non-substantive amendments to rate agreement is granted to the Household Goods Forwarder Tariff Bureau, on behalf of its member carriers. This approval may be revoked if, upon protest, the Commission issues a decision finding the amendment(s) inconsistent the National Transportation Policy.

This amendment may be inspected at the Public Docket Room, Office of the Secretary, Interstate Commerce Commission, Washington, DC.

DATES: Protests should be filed on or before October 14, 1982. A reply may be filed by October 29, 1982.

ADDRESS: Protests (an original and 7 copies) should be addressed to: Interstate Commerce Commission, Office of Proceedings, Room 5356, 12th & Constitution Ave., NW., Washington, DC 10423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7278, or Tom Smerdon, (202) 275–7277.

SUPPLEMENTARY INFORMATION: On March 22, 1982, the Household Goods Forwarders Tariff Bureau (HGFT), on behalf of its member carriers, filed an application for approval of amendments to the by-laws of its agreement between its members.[1] These amendments were adopted by HGFT's Executive Committee on August 27, 1981, pursuant to a review of HGFT's operations by Commission field staff. HGFT proposes to (1) modify the definition of dues paying members to reflect Commission practices with regard to the 50-State territorial scope of household goods freight forwarder authority; (2) authorize its president to select the date and place of HGFT's annual meeting; and (3) establish quorum rules for its meetings whereby 30 percent of its members in good standing will constitute a quorum at annual or special meetings at which rates, rules or classifications are discussed or considered. At all other meetings, a quorum shall consist of the members present in good standing.

The first two proposed amendments are consistent with Commission practice. The final amendment concerning quorum rules is consistent with the standards and procedures announced in Ex Parte No. 297 (Sub-No. 5), *Motor Carrier Rate Bureau—Implementation of Pub. L. 96–296,* 364 I.C.C. 464 (1980) and our subsequent decision in that proceeding making certain pertinent modifications at 364 I.C.C. 921 (1981). Although that proceeding pertains to motor carriers, we believe its quorum requirements are also reasonable for household goods freight forwarders.

Provisional approval under the tenets of 49 U.S.C. 10706(c) of the non-substantive amendments is granted.

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[1] The original agreement was approved in Section 5a Application No. 106, *Household Goods Forwarders—Agreement,* (not printed) decided April 25, 1972, as amended by Order served May 7, 1973. HGFT has no other pending applications for approval of amendments to its agreement.

This approval may be revoked if an interested party demonstrates that it is inconsistent with the National Policy and we issue a decision withdrawing approval. Pleadings must be served on all parties.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

(49 U.S.C. 10706)

Dated: September 16, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-26317 Filed 9-23-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 297]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: September 20, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Canadian Carrier Applicants

In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC-157, *Investigation Into Canadian Law and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority.*

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Shaffer, Williams, and Higgins.

Agatha L. Mergenovich,

Secretary.

MC 95398 (Sub-1)X, filed September 13, 1982. Applicant: WM. B. KENT & SONS, INC., 550 Turnpike St., North Andover, MA 01845. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Lead certificate: (1) Broaden household goods to "household goods and furniture and fixtures"; and (2) expand North Andover, MA and points in Massachusetts within 10 miles of North Andover, MA to points in Essex and Middlesex Counties, MA.

MC 111651 (Sub-20)X, filed September 8, 1982. Applicant: MIDDLEWEST FREIGHTWAYS, INC., 6801 Prescott Ave., St. Louis, MO 63147. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Ste. 600, Kansas City, MO 64105. Subs 1, 3, 5, 8, 9, 12 and 17 certificates: (A) Broaden to general commodities (except classes A and B explosives, household goods and commodities in bulk) from "packed, bagged or crated commodities" over a specified regular route between Kansas City, MO, and Wichita, KS, to render authority consistent with authorized "general commodities" service to intermediate and off-route points, Sub 1; (B) remove (1) all restrictions in its general commodity authority except "classes A and B explosives, household goods and commodities in bulk", Subs 1, 3, 5, 8, 9, 12 and 17; (2) intermediate point restrictions, to authorize service at all intermediate points on its regular routes, Subs 1 and 3; (3) "site and/or supply point" restriction, Subs 3, 8, 9 and 12, (C) broaden off-route point authority to county-wide authority: Jefferson, Bullit and Oldham Counties, KY and Harrison, Floyd and Clark Counties, IN (points within 5 miles of Louisville, KY), Sub 3.

MC 126605 (Sub-6)X, filed September 8, 1982. Applicant: BEAVER'S DUMP TRUCK SERVICE, INC., Route 3, Box 338, Live Oak, FL 32060. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. Lead certificate, broaden (1)(a) sand to "clay, concrete, glass or stone products," (b) limestone and limestone products to "ores and minerals," and (c) fertilizer and fertilizer materials to "chemicals and related products"; (2) to countywide authority: Cook, Lowndes, Thomas and Tift Counties, GA (Adel, Valdosta, Lake Park, Thomasville, and Tifton), and Jefferson and Madison Counties, FL (Monticello and Madison); (3) from one-way authority to radial authority; and (4) eliminate "dry, in bulk, in dump vehicles" restrictions.

MC 143708 (Sub-9)X, filed September 1, 1982. Applicant: DUNES TRANSPORT, INC., 3965 North Meridian St., Indianapolis, IN 46208. Representative: Warren C. Moberly, 777 Chamber of Commerce Building, Indianapolis, IN 46204. Sub 3F certificate, broaden (1) commodity description to "such commodities as are dealt in or used by manufacturers and distributors of food and related products," from such commodities as are dealt in or used by manufacturers and distributors of bakery products; and (2) from plantsites to citywide authority: Fremont, Indianapolis and Lake Station, IN (facilities at Fremont, Indianapolis, and Lake Station).

[FR Doc. 82-26311 Filed 9-23-82; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Inland Oil and Chemical Corporation, 900 S. Eutaw Street, Baltimore, Md. 21230.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation: Leidy Chemical Corporation—Maryland Corporation.

1. Parent corporation and principal office: Parts Industries Corporation, 601 South Dudley Street, Memphis, Tennessee 38104.

2. Wholly-owned subsidiaries which will participate in the operations and state(s) of incorporation: Heavy Duty Parts, Inc., Tennessee; Key Parts, Inc., North Carolina; Worldparts Corporation, Tennessee.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-26313 Filed 9-23-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 290 (Sub-2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of approval of railroad cost index.

SUMMARY: The Commission has decided to approve the cost index filed by the Association of American Railroads (AAR) under the procedures of Docket Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures.* The application of this index provides for a Rail Cost Adjustment Factor (RCAF) of 1.159. This RCAF when compared to the third quarter RCAF of 1.159 shows no change in total railroad input prices. It remains below the RCAF of 1.177 published for the first quarter 1982. No rate actions will be ordered.

EFFECTIVE DATE: September 24, 1982.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek (202) 275–0938; Tom Smerdon (202) 275–7277.

SUPPLEMENTARY INFORMATION: By decision served April 17, 1981 (46 FR 22594, April 20, 1981), we outlined the procedures for calculation of the interim Mid-Quarter Index of railroad costs and the methodology for computing the Rail Cost Adjustment Factor. We also decided to require the AAR, no later than 20 days before the end of each quarter, to calculate and submit to the Commission the mid-quarter index.

We have received AAR's calculations of the mid-quarter index and have found that these calculations comply with the guidelines outlined in our decision served April 17, 1981.

The indices derived from these calculations are shown in the table below.

Interim Mid-quarter Index

Category	1980 weight (percent)	2d quarter 1982 actual	3d quarter 1982 forecast	4th quarter 1982 forecast
Salaries, wages and supplements	47.2	123.9	128.6	128.5
Fuel	12.3	106.0	111.0	111.7
Materials and supplies	12.2	109.0	108.1	107.9
Other expenses	28.3	111.1	111.2	111.2
Weighted Average:				
A–1980=100		116.3	119.0	119.0
B–10/1/80=100[1] (rail cost adjustment factor)		113.2	115.9	115.9

[1] Weighted average 10/1/80=102.7

Based on the above figures, we conclude that the Third Quarter 1982 Rail Cost Adjustment Factor (RCAF) remains at 1.159 and that the Fourth Quarter 1982 RCAF is also 1.159.

This decision will not significantly affect the quality of the human environment or conservation of energy resources. Although this proceeding is not subject to Public Law 96–354, it is our opinion that it will not have a significant adverse impact on a substantial number of small entities.

(49 U.S.C. 10321, 10707a, 5 U.S.C. 553)

Dated: September 16, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–26312 Filed 9–23–82; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30025]

Rail Carriers; Norfolk and Western Railway Co. and Wabash Railroad Co.—Amendment of Lease—Exemption

September 20, 1982.

Petitioner, the Norfolk and Western Railway Company (N&W), was authorized in *Norfolk & W. Ry. and New York, C. St. L. Ry. Merger,* 324 I.C.C. 1 (1964), to lease the properties of petitioner, the Wabash Railroad Company (Wabash) for an eight year period. The Commission has twice approved eight year extensions of the lease period, with the last commencing October 16, 1980.

Section 4 of the N&W's lease with the Wabash provides that the N&W shall make certain rental payments to the Wabash according to a specified formula. Subsection (11) of section 4 permits adoption of a new formula if any changes are made to, or in, the common stock of N&W as a result of any merger, consolidation, or reorganization involving the N&W.

On June 1, 1982, N&W and the Southern Railway Company (Southern) were consolidated under the common control of Norfolk Southern Corporation (NCS). Each share of N&W's outstanding common stock was converted to one share of common stock in NSC. In view of this change, the N&W and the Wabash propose, pursuant to section 4 (11) of the involved lease agreement, to modify the existing formula for determining the rental payments paid to the Wabash by the N&W. To the extent that the amount of these payments has been based upon the amount of the dividend paid by the N&W prior to its consolidation with the Southern, it would now be based upon the amount of the dividend paid by the NSC.

N&W and Wabash have also agreed to modify their lease agreement so that the rental payments, which have been calculated with reference to allowances for depreciation and retirements, as prescribed by this Commission, would now be calculated with reference to the deductions for depreciation and retirements allowed under Federal tax laws. This change takes into account certain provisions of the Economic Recovery Tax Act of 1981, which make it possible for the Wabash to obtain the maximum benefit from the deductions involved.

The N&W controls the Wabash through its ownership of 99 percent of Wabash common stock and 2.1 percent of Wabash preferred stock. The proposed changes in the lease agreement are minor in nature and will not result in any changes in service levels or operations, nor will they affect the existing competitive scheme.

By petition filed August 20, 1982, the N&W and the Wabash seek an exemption under 49 U.S.C. 10505 of the proposed modification. Since it would be a transaction wholly within a corporate family that would not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family, the proposal is exempt pursuant to 49 CFR 1111.2(d)(3). See *Railroad Consolidation Procedures,* 366 I.C.C. 75, 94 (1982). As a condition to the use of this exemption, any rail employees affected by the described modification of the lease shall be protected pursuant to *Mendocino Coast Ry., Inc.-Lease and Operate,* 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980). This will satisfy the statutory requirements of 49 U.S.C. 10505(g)(2).

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–26315 Filed 9–23–82; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Agency Forms Under Review

September 21, 1982.

OMB has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all the entries grouped into new forms, revisions, extensions, or revisions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available); (2) The office of the agency issuing this form; (3) The title of the form; (4) The agency form number,

if applicable; (5) How often the form must be filled out; (6) Who will be required or asked to report; (7) An estimate of the number of responses; (8) An estimate of the total number of hours needed to fill out the form; (9) An indication of whether Section 3504(H) of Pub. L. 96–511 applies; (10) The name and telephone number of the person or office responsible for OMB review.

Copies of the proposed forms and supporting documents may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the reviewer listed at the end of each entry and to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer Larry E. Miesse—202–633–4312.

Extension (Adjustment to Burden Only)

- Immigration and Naturalization Service, Department of Justice

Agreement by Transportation Line to Assume Responsibility for Removal of Aliens.
Nonrecurring
Businesses or other institutions (except farms)
Transportation lines bringing aliens to the U.S.: 6,000 responses; 720 hours; not applicable under 3504(h).
Andy Uscher—395–4814

Extension (No Change)

- Immigration and Naturalization Service, Department of Justice

Application to File Declaration of Intention (Immigrants).
Nonrecurring
Individuals or households
Permanent resident aliens over 18 years of age: 5,000 responses; 2,500 hours; not applicable under 3504(h).
Andy Uscher—395–4814

- Immigration and Naturalization Service, Department of Justice

Petition to Classify Orphan as an Immediate Relative
Nonrecurring
Individuals or households
Alien orphan petitioners: 6,100 responses; 3,050 hours; not applicable under 3504(h).
Andy Uscher—395–4814

- Immigration and Naturalization Service, Department of Justice

Application for Status as Permanent Resident Cuban Refugee.
Nonrecurring
Individuals or households
Cuban refugees: 7,000 responses; 3,500 hours; not applicable under 3504(h).
Andy Uscher—395–4814

Larry E. Miesse,

Department Clearance Officer, Systems Policy Staff, Office of Information Technology, Justice Management Division, Department of Justice.

[FR Doc. 82–26299 Filed 9–23–82; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

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 September 13, 1982–September 17, 1982.

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 the following case the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–13,158; Zenith Radio Corp., Chicago, IL, Plant #6

Affirmative Determinations

TA–W–13,156; Zenith Radio Corp., Chicago, IL, Plant #1

A certification was issued in response to a petition received on December 17, 1981 covering all workers separated on or after December 28, 1981.

TA–W–13,157; Zenith Radio Corp., Chicago, IL, Plant #2

A certification was issued in response to a petition received on December 17, 1981 covering all workers separated on or after December 28, 1981.

I hereby certify that the aforementioned determinations were issued during the period September 13, 1982–September 17, 1982. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 21, 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82–26398 Filed 9–23–82; 8:45 am]
BILLING CODE 4510–30–M

Dismissals of Applications for Reconsideration of Negative Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of Trade Adjustment Assistance in the cases listed below. In each case, the review indicated that the applications contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissals of the applications were issued.

TA–W–12,599; Superior Shake Company, Concrete, WA
Dated: September 13, 1982: Harold A. Bratt, Acting Deputy Director, Office of Program Management, Unemployment Insurance Service

TA–W–12,488; Westclox U.S., Yadkinville, NC
Dated: September 13, 1982: Harold A. Bratt, Acting Deputy Director, Office of Program Management, Unemployment Insurance Service

I hereby certify that the aforementioned determinations were issued on September 13, 1982. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 21, 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82–26399 Filed 9–23–82; 8:45 am]
BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 4, 1982.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 4, 1982.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C., this 20th day of September 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Bata Shoe Co., Inc., Elkins Div. (workers)	Elkins,W. Va	9/14/82	9/10/82	TA-W-13,782	Shoes—men's, ladies' and boys fabric uppers.
Dakota Enterprises, Inc. (workers)	Lyburn, W. Va	9/14/82	9/9/82	TA-W-13,783	Coal, metallurgical mine.
Hawera Tool Manufacturing (workers)	Jackson, Miss	9/10/82	9/3/82	TA-W-13,784	Bits, masonry, carbide.
Jane Ann Fashions (workers)	Coaldale, Pa	9/16/82	9/10/82	TA-W-13,785	Sportsware, dresses—ladies'.
L.F. Fales Machine Co. (workers)	Walpole, Mass	9/13/82	9/8/82	TA-W-13,786	Machining, contract, machines—sewing industrial and slitters.
Lee Ann Coal Co. (UMWA)	Madison, W. Va	9/10/82	9/3/82	TA-W-13,787	Coal—metallurgical mine.
N.L. Chemicals/N.L. Industries, Titanium Div. (OCAWU).	Sayreville, N.J	9/16/82	9/13/82	TA-W-13,788	Titanium dioxide.
Phoenix Steel Corp., Claymont Plant (USWA)	Claymont, Del	9/16/82	9/8/82	TA-W-13,789	Plates and specialty steel.
Phoenix Steel Corp., (USWA)	Phoenixville, Pa	9/15/82	9/8/82	TA-W-13,790	Pipe and tube.
Refac Electronics Corp. (workers)	Winsted, Conn	9/13/82	8/20/82	TA-W-13,791	Incandescent digital and alphanumeric display.
Republic Steel Corp. Southern District (USWA)	Gadsden, Ala	9/8/82	8/11/82	TA-W-13,792	Steel plate, strip and sheet, galvanized coils and sheets.
Superior Electric Products Corp. (IBEW)	Cape Girardeau, Mo	9/16/82	9/8/82	TA-W-13,793	Fans.

[FR Doc. 82-26400 Filed 9-23-82; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107 (e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) will meet on October 13–14, 1982 in Room S–4215, Frances Perkins Department of Labor Building, Washington, D.C. The meeting is open to the public and will begin at 9:00 a.m.

The agenda for this meeting will include the swearing in of new members, updates on safety and health standards activities, a review of a draft proposal for the revision of Subpart P—Trenching and Excavation, and a general discussion of construction safety and health matters.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Oral presentations will be scheduled at the discretion of the Chairman depending on the extent to which time permits. Communications may be mailed to: Ken Hunt, Committee Management Officer, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N–3635, Washington, D.C. 20210, telephone 202–523–8024.

Materials provided to members of the Committee are available for inspection and copying at the above address.

Signed at Washington, D.C., this 20th day of September 1982.

Thorne G. Auchter,

Assistant Secretary.

[FR Doc. 26401 Filed 9-23-82; 8:45 am]

BILLING CODE 4510-26-M

Puerto Rico State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 30, 1977, notice was published in the **Federal Register** (42 FR 43628) of the approval of the Puerto Rico plan and the adoption of Subpart FF to Part 1952 containing the decision.

The Puerto Rico plan provides for the adoption of Federal standards as State standards by reference. Section 1953.20 29 CFR provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required." In

response to Federal standards changes, the State has submitted by letter dated June 9, 1982 from Assistant Secretary John Cinque to Regional Administrator Roger A. Clark, and incorporated as part of the plan, State standards comparable to the Occupational Safety and Health Administration final standards for Guarding of Low-Pitched-Roof Perimeters During the Performance of Built-Up Roofing Work, as published in the **Federal Register** (45 FR 75618) dated November 14, 1980; Electrical standards, as published in the **Federal Register** (46 FR 4034) dated January 16, 1981; and by letter dated July 12, 1982, Electrical standards—corrections, as published in the **Federal Register** (46 FR 40183) dated August 7, 1981; Occupational Noise Exposure; Hearing Conservation Amendment, as published in the **Federal Register** (46 FR 4078) dated January 16, 1981, with corrections as published in the **Federal Register** (46 FR 42622) dated August 21, 1981. These standards which are contained in the Puerto Rico Regulations, Number Four (equivalent to 29 CFR Part 1910) and Number Ten (equivalent to 29 CFR Part 1926) were promulgated by resolutions adopted by the Puerto Rico Department of Labor and Human Resources on February 12, 1982 and June 2, 1982, pursuant to the Puerto Rico Act Number 16 and Chapter 52 of the Puerto Rico Rules and Regulations Act of 1958.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards and accordingly are hereby approved.

3. *Location of supplement for inspection and copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 3445, 1515 Broadway, New York, New York 10036; Puerto Rico Department of Labor and Human Resources, Prudencio Rivera Martinez Bldg., 505 Munoz Rivera Avenue, Hato Rey, Puerto Rico 00917; Office of the Director, Federal Compliance and State Programs, Occupational Safety and Health Administration, Room N3613, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Puerto Rico State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State law and further participation would be unnecessary.

The decision is effective September 24, 1982.

(Sec. 18 Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at New York City, New York, this 10th day of August 1982.

Robert C. Hallock,

Acting Regional Administrator.

[FR Doc. 82–26402 Filed 9–23–82; 8:45 am]

BILLING CODE 4510–26–M

Office of Pension and Welfare Benefit Programs

[Application No. D–3498]

Proposed Exemption for Certain Transactions Involving the Smith, Barney Real Estate Fund Located in New York, New York

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt certain prohibited transactions between Smith, Barney Real Estate Fund (the Fund) and certain parties in interest with respect to the Fund, subject to specified conditions. The proposed exemption, if granted, would affect the Fund, employee benefit plans which participate in the Fund and their participants and beneficiaries, certain parties in interest with respect to the Fund, and any other persons participating in the proposed transactions.

DATES: Written comments and requests for a public hearing must be received by the Department on or before November 9, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D–3498. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of certain sections of the Act and from certain sanctions resulting from the application of section 4975 of the Code. The proposed exemption was requested in an application filed on behalf of the trustees of the Fund (the Trustees), pursuant to section 408(a) of the Act and 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, this notice of pendency is issued solely by the Department.

Preamble

On July 25, 1980, the Department published a class exemption, Prohibited Transaction Exemption 80–51 (PTE 80–51, 45 FR 49709), which permits collective investment funds that are maintained by banks and in which employee benefit plans participate to engage in certain transactions provided that specified conditions are met. The transactions for which the applicants have requested relief are those which are the subject of PTE 80–51.

The Department stated in PTE 80–51 that a comment had been received to the proposed class exemption requesting that it be amended to apply to collective

investment funds that are not maintained by banks. Relief was granted for bank collective investment funds because, among other reasons, such funds are regulated by other governmental agencies and constitute a well-defined class of funds. In the case of collective investment funds that are not maintained by banks, the Department found that the record was insufficient to determine the nature of the funds and the entities managing the funds that would comprise the class covered by such broad relief. As a result, the Department stated that it could not make the required statutory findings for such relief, and that relief for non-bank maintained collective investment funds should be dealt with on an individual rather than a class basis.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Fund is a qualified group trust formed to provide qualified pension and profit-sharing plans (the Plans) with a medium for pooling a portion of their funds for investment in real estate and interests in real estate. The Internal Revenue Service has ruled that the Fund is qualified under section 401(a) of the Code and is exempt from Federal income tax under section 501(a) of the Code. The Fund was established under a written agreement of Trust (the Trust Agreement) dated October 1, 1976. A Plan's interest in the Fund is represented by Units and a participating Plan in the Fund is referred to as a Unitholder. As of June 30, 1982, there were 55 Unitholders participating in the Fund, and the total value of the Fund's assets was approximately $92,000,000.

2. Messrs. Jack L. Billhardt, Thomas J. Gochberg, John A. Orb, John A. Morgan, and J. Perry Ruddick currently serve as the Trustees of the Fund. The Trustees, in addition to performing certain administrative and ministerial functions, are solely responsible for accepting or rejecting participation in the Fund by a prospective Plan, for determining the net fair market value of the Fund's assets, and for determining the amount and time of distributions to Unitholders.

3. Pursuant to an agreement dated October 1, 1976 (the Agreement), Smith, Barney Real Estate Corporation (SBREC) serves as the investment manager of the Fund. SBREC, a New York corporation, was formed to provide advice and management in connection with real estate activities. Since its founding in 1969, SBREC has invested, on behalf of its clients, over $1 billion in over 150 properties. These investments have been primarily in multi-family residential properties, office buildings, shopping centers, and other commercial properties. Currently, SBREC has approximately 525 employees. SBREC is a wholly-owned subsidiary of SBHU Holdings Inc. (SBHU), and is a sister corporation of Smith Barney, Harris Upham & Co. Incorporated (Smith Barney).

4. SBREC has exclusive authority to exercise, on behalf of the Trustees, all of the powers necessary to acquire, manage and dispose of all of the Fund's investments. SBREC receives reasonable compensation for its services. Pursuant to the Agreement, SBREC does not permit the Fund to own or have any interest in any property in which an interest is owned or held by SBREC or any Trustee, or any entity controlled by or controlling SBREC or any Trustee, or any other individual, corporation or entity affiliated with SBREC or a Trustee, as described within the Fund documents. Neither SBREC nor any of its affiliates receive any real estate commissions, property acquisition fees, mortgage placement fees, property management fees or similar fees in connection with the Fund's acquisition, management or disposition of properties. The Trustees are not compensated by the Fund for serving as trustees, but receive compensation from SBREC and/or SBHU and/or Smith Barney for services performed in connection with their duties as officers and/or directors of those corporations.

5. The Fund instruments provide that only pension and profit-sharing trusts qualified under section 401 of the Code and exempt from taxation under section 501(a) of the Code may participate in the Fund. Each Unitholder executes an agreement (the Adoptive Agreement) causing the governing instrument of such Plan to be amended to incorporate the Trust Agreement. Neither the sponsor-employer of such Unitholder nor any of the trustees, administrators, officers or investment advisers of such sponsor-employer or its Plan have any right or power to control or in any way participate in the operation or management of the Fund.

6. The Fund will invest, except in unusual circumstances, only in income-producing properties. Such investments will be primarily in multi-family residential properties, shopping centers, office buildings and other commercial properties. The Fund intends to diversify its investments geographically throughout the continental United States. Income from the Fund, less expenses, is either reinvested in real estate or distributed to the Unitholders. Pending such reinvestment or distribution, cash assets of the Fund are invested in short-term government obligations. Similarly, capital contributions from new and existing Unitholders are similarly invested in short-term government obligations pending investment in real estate.

7. The fiduciaries of each Unitholder, who are independent of the Fund, will maintain complete discretion with respect to the investment in or redemption of Units from the Fund. In order to provide sufficient time for the orderly disposition of assets of the Fund, the Fund has up to two years and three months to redeem the interests of a requesting Unitholder. It is the intention of the Trustees of the Fund to honor a Unitholder's request for a withdrawal as soon as practicable.

8. Because each Unitholder will incorporate as part of such Plan the terms, provisions, and conditions of the Trust Agreement, the Fund will occupy a position equivalent to the trust created under such Unitholder. Accordingly, pursuant to Rev. Rul. 81–100, 1981–13 I.R.B. 32, it is the position of the Department that a "party in interest" or "disqualified person" as defined in the Act [1] with respect to a Unitholder may be viewed as a party in interest with respect to the Fund. Accordingly, a transaction between such party and the Fund may be viewed as a prohibited transaction as described in section 406(a) of the Act, section 4975(c) of the Code, or both. The applicants represent that if the Fund is unable to enter into transactions with certain persons because such persons are parties in interest with respect to Unitholders, the Fund's ability to prudently make its investments and conduct its operations solely for the benefit of the Unitholders will be unduly restricted. The applicants represent that such transactions, because of the nature of the Fund, are difficult to identify and control, but if entered into would be in the interests of the Funds, the Unitholders and their participants and beneficiaries.

9. The applicants request prospective exemptive relief for transactions between the Fund and parties in interest who maintain no formal authority over the management and investments of the Fund, when such transactions are necessary for the Fund to prudently make its investments and conduct its

[1] For purposes of this exemption the term "party in interest" shall include a disqualified person as defined in section 4975(e)(2) of the Code.

operations. The applicants request prospective exemptive relief for those classes of transactions between the Fund and certain parties in interest which were afforded exemptive relief in PTE 80–51. The applicants propose that such classes of transactions be subject to the identical conditions, limitations, and restrictions as those delineated with respect to the transactions afforded exemptive relief in PTE 80–51.

10. The applicants represent that because Units of the Fund constitute "securities" within the meaning of the Securities Act of 1933 (the 1933 Act), full and fair disclosure of information to investors in connection with the offer and sale of the Units is required. Full and fair disclosure is accomplished by either registration of the securities with the Securities and Exchange Commission (the Commission) or by satisfying the requirements for a private placement of such securities under section 4(2) of the 1933 Act.

11. In furtherance of the purposes of section 4(2), the Commission has promulgated Regulation D which exempts certain transactions meeting stated objective standards from the registration provisions of the securities laws. Generally, Regulation D provides an exemption where, among other things, a purchaser alone, or with his representative, has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment. Regulation D also requires that each issuer provide essentially the same kind of information as would be provided upon registration if the issuer believes such information is material, and that each purchaser generally possess or have access to the same kind of information that would have been available to them upon registration.

12. The Fund fully complies with the requirements of Regulation D (and its predecessor, Rule 146) at the time that Units are offered and sold to prospective Unitholders. As a means of ensuring that these requirements are satisfied, the Fund provides each Unitholder with an offering memorandum describing the Fund, forms of the Fund's Adoptive and Group Trust Agreements, recent reports regarding the Fund's activities, and financial statements describing the assets and liabilities of the Fund. In addition, the Fund requires that a prospective Unitholder's initial purchase of Units must be for at least $250,000. The investments of many Unitholders are substantially in excess of $250,000. The Trustees also make a determination, as required by Regulation D, whether a prospective Unitholder is sufficiently knowledgeable and experienced, or has advisers who have such knowledge and experience, to make the proper investment decision. In this regard, the Trustees are empowered to refuse the sale of Units to any prospective Unitholder if they determine that the prospective Unitholder lacks the sophistication necessary for investing in the Fund. A substantial majority of the Unitholders' investment advisers are banks, insurance companies or registered investment advisers. In addition, virtually all of the Unitholders are continually advised by accounting firms, actuarial firms and law firms.

13. The Fund also supplies Unitholders and their advisers with quarterly reports on the Fund's activities containing unaudited financial information, including a statement of the Fund's annual return and Unit value as of the beginning and end of each quarter, and a statement of current and proposed transactions and developments affecting the Fund and the Fund's investments. The annual report of the Fund includes financial information, audited by the Fund's independent certified public accountants, Arthur Andersen & Co., and includes a balance sheet for the Fund, a profit and loss statement for the Fund and a statement of changes in the Fund's financial position. These reports are audited and distributed to the Unitholders within 90 days after the end of the Fund's fiscal year. These reports also show, for the partcular year, all fees paid to SBREC, all purchases and sales of real estate, the amount of Unitholders' contributions and redemptions, and distributions to Unitholders.

14. Further, the Fund prepares and distributes to each Unitholder such other information as may be requested by Unitholders. The books and records of the Fund are available for examination by Unitholders at all times, and individual Unitholders on a regular basis arrange meetings with representatives of the Fund in order to review the Fund's financial results and to discuss current and proposed transactions of the Fund.

15. In summary, the applicants represent that the proposed exemption for certain transactions between the Fund and certain parties in interest satisfies the criteria of section 408(a) of the Act because: (a) The proposed exemption would allow the Fund to enter into transactions which, although prohibited, are necessary for the Fund to prudently make its investments and conduct its operations solely for the benefit of its Unitholders and their participants and beneficiaries; (b) the proposed exemption would only apply to those classes of prohibited transactions which were afforded relief in PTE 80–51 and would be subject to the identical conditions, limitations, and restrictions as those delineated with respect to the transactions afforded exemptive relief in PTE 80–51; (c) independent fiduciaries, unrelated to the Fund, the Trustees, SBREC, or any other related party maintain complete discretion with respect to investment in or redemption of Unitholders' assets from the Fund; and (d) such fiduciaries are knowledgeable and experienced investors acting on behalf of large Plans and are provided with detailed information on the Fund.

Notice to Interested Persons

Within 14 days after the publication in the **Federal Register** of the proposed exemption, the Fund will send by mail a copy of such proposed exemption to the fiduciaries of each Unitholder in the Fund. The Fund will also inform such fiduciaries of their right to comment and request a hearing within the time period set forth in the notice of proposed exemption.

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 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 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) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and 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

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and 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.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interst in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested 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 Fund

(a) Effective upon the date of publication in the **Federal Register** of the grant of this exemption (hereinafter, the Effective Date), the restrictions of sections 406(a), 406(b)(2) and 407(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 transactions described below if the applicable conditions set forth in Section III are met.

(1) *Transactions Between Parties-In-Interest and the Fund: General.*

Any transaction between a party-in-interest with respect to a Unitholder and the Fund, or any acquisition or holding by the Fund of employer real property, if the party-in-interest is not SBREC, any of its affiliates, or any other group trust managed by SBREC or any of its affiliates, and if, at the time of the transaction, acquisition or holding, the interest of the Unitholder, together with the interests of any other Unitholders maintained by the same employer or employee organization in the Fund, does not exceed 5 percent of the total of all assets in the Fund.

(2) *Special Transactions Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiple Employer Plan and the Fund.*

Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan (as defined in section 3(37)(A) of the Act and section 414(f)(1) of the Code) that is a Unitholder and the Fund, or any acquisition or holding by the Fund of employer real property, if at the time of the transaction, acquisition or holding—

(A) The interest of the multiemployer plan in the Fund does not exceed 10 percent of the total assets in the Fund, and the employer is not a "substantial employer" with respect to the plan, or

(B) The interest of the multiemployer plan in the Fund exceeds 10 percent of the total assets in the Fund, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."

(3) *Acquisitions, Sales or Holdings of Employer Real Property.*

(A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer real property by the Fund which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this Section I, if no commission is paid to SBREC or to the employer or to any affiliate of SBREC or the employer in connection with the acquisition, sale or lease of employer real property; and

(i) Each parcel of employer real property and the improvements thereon held by the Fund are suitable (or adaptable without excessive cost) for use by different tenants, and

(ii) The property of the Fund that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(B) In the case of a Unitholder that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this section (3) shall be available only if, immediately after the acquisition of the real property, the aggregate fair market value of employer real property held by the Fund does not exceed 10 percent of the fair market value of the Unitholder's interest in the Fund.

(C) For purposes of the exemption contained in subsection (A) of this section (3), the term "employer real property" shall include real property leased to a person who is a party-in-interest with respect to a Unitholder by reason of a relationship to the employer described in section 3(14)(E), (G), (H) or (I) of the Act.

(b) Effective upon the Effective Date, the restrictions of section 406(a)(1) (A), (B), (C), and (D) and section 406(b)(1) and (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 transactions described below, if the conditions of Section III are met.

(1) *Transactions with Persons Who Are Parties in Interest With Respect to a unitholder Soley by Virtue of Being Certain Service Providers or Certain affiliates of Service Providers.*

Any transaction between the Fund and a person who in a party-in-interest with respect to a Unitholder if—

(A) The person is a party-in-interest (including a fiduciary) solely by reason of providing services to the Unitholder, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Unitholder's assets in, or held by, the Fund, and

(B) The person is not an affiliate of SBREC.

(2) *Certain Leases and Goods.*

The furnishing of goods to the Fund by a party-in-interest with respect to a Unitholder or the leasing of real property owned by the Fund to such party-in-interest and the incidental furnishing of goods to such party-in-interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in connection with real property owned by the Fund;

(B) The party-in-interest is not SBREC or any affiliate of SBREC; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party-in-interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the Fund prior to the transaction.

(3) *Management of Real Property.*

Any services provided to the Fund by SBREC or by an affiliate of SBREC in connection with the management of the real property owned by the Fund, if the compensation paid to SBREC or its affiliate does not exceed the cost of the services to SBREC or its affiliate.

(4) *Transactions Involving Places of Public Accommodation.*

The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Fund to a party-in-interest with respect to a Unitholder, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

Section II—Excess Holdings Exemption for Employee Benefit Plans

(a) Effective upon the Effective Date, the restrictions of sections 406(a), 406(b)(2) and 407(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 any acquisition or holding of qualifying employer real property (other than through the Fund) by a Participating Plan if (1) the acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer real property held by the Fund; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of Section I of this exemption are met; and (3) the applicable conditions set forth in Section III of this exemption are met.

Section III—General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of SBREC or its affiliate, the terms of the transaction are not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) SBREC or its affiliate maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of SBREC or its affiliate, 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 (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and nothwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section III 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 Unitholder who has authority to acquire or dispose of the interests in the Fund of the Unitholder or any duly authorized employee or representative of such fiduciary,

(C) any contributing employer to any Unitholder or any duly authorized employee or representative of such employer, and

(D) any participant or beneficiary of any Unitholder or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine the trade secrets of SBREC or any of its affiliates, or commercial or financial information which is privileged or confidential.

Section IV—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) The term "substantial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a) of the Code, determined without regard to section 1563(a)(4) and (e)(3)(c) of the Code, as one employer) who has made contributions to or under a multiemployer plan for each of—

(1) the two immediately preceding plan years, or

(2) the second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year.

(e) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Fund occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to a holding exempt by virtue of Section I(a)(1) at such time as the interest of the Unitholder exceeds the percentage interest limitation of Section I(a)(1), unless no portion of such excess results from an increase in the assets allocated to the Fund by the Unitholder. For this purpose, assets allocated do not include the reinvestment of Fund earnings. Nothing in this paragraph (e) shall be construed as exempting a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(f) Each Unitholder shall be considered to own the same proportionate undivided interest in each asset of the Fund as its proportionate interest in the total assets of the Fund as calculated on the most recent preceding valuation date of the Fund.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and

that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-26375 Filed 9-23-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3500]

Proposed Exemption for Certain Transactions Involving the Darby Graphics, Inc. Employees' Profit Sharing Plan and Trust Located in Chicago, Illinois

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security At of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed loan by the Darby Graphics, Inc. Employees Profit Sharing Plan and Trust (the Plan) of the lesser of $175,000 or 40% of the Plan's assets to Citizens Bank and Trust Company (the Bank) as Trustee under Trust Agreement 66-4325 (Land Trust); and the guarantee of repayment by the principals of Rockwell Enterprise (Rockwell). The entire beneficial ownership under the Land Trust is held by Rockwell, a party in interest with respect to the Plan. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the Land Trust, the Bank and Rockwell.

DATES: Written comments and request for a public hearing must be received by the Department on or before November 3, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-3500. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the retrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and from 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. The proposed exemption was requested in an application filed by the Plan's trustees, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procudures 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, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan, which was established in 1967, is a profit sharing plan with 34 participants and total assets as of April 30, 1982 of $432,962. John H. Darby and Terry Stanton serve as co-trustees under the Plan. Darby Graphics, Inc. (the Employer) is an Illinois corporation which has been engaged in the printing business since 1964.

2. Rockwell is a joint venture composed of Terry Stanton, Donald J. Zirnite, Howard D. Gebel and Dennis J. Frantzsve (Principals), each of whom is an officer and/or director of the Employer.

3. On August 19, 1980, Rockwell purchased a parcel of improved real property located at 4015 N. Rockwell Street, Chicago, Illinois (the Property) for $325,000. The Property is improved with an industrial building containing approximately 27,000 square feet. Rockwell conveyed title to the Property to the Bank, but retained full beneficial interest in the resulting Land Trust.[1] The Land Trust has been leasing the Property to the Employer since July 1, 1981 (the Lease).

4. The Plan proposes to loan the Land Trust the lesser of $175,000 or 40% of the Plan's assets. The loan will be secured by a first mortgage on the Property and by an assignment of the Lease to the Plan. The loan is to be repaid in 180 equal monthly installments. The interest rate for the first 5 years of the loan will be 16¼%. On the fifth and tenth anniversaries of the loan the interest rate will be adjusted to the higher of 16¼% per annum or the interest rate for comparable loans prevailing in Cook County, Illinios, as determined by an independent fiduciary.

5. The Property was appraised by Donald F. Martorelli of Brandt Carlson Real Estate Appraisers of Park Ridge, Illinois, as having a fair market value of $350,000 as of April 22, 1982. Thus, the loan would represent only about 50% of the value of the improved real property that will secure it. The loan will also be secured by the personal guarantee of the Principals, whose net worth exceeds $3,000,000. The Land Trust represents that it will add any additional collateral that may be required during the life of the loan to assure that the value of the collateral is at all times equal to at least 150% of the outstanding balance of the loan. It is further represented that if the Land Trust has no additional collateral, the Employer will provide such additional collateral. During the life of the loan, the Land Trust will keep the Property insured for 100% of its full restoration or replacment cost against all risks, including fire, lightning, windstorm, hail and riot.[2] The proceeds of the insurance policies will be payable directly to the Plan.

6. Citizens Bank & Trust Company located in Park Ridge, Illinois, has represented that it would lend $175,000 to the Land Trust for 15 years at 16% per annum. The loan would be secured by a first mortgage on the Property.

7. The Trustees of the Plan will appoint William Zundel (Mr. Zundel), a Vice President and Controller for the National Association of Realtors, who is experienced in accounting, real estate investments and financing to serve as the independent fiduciary for the proposed loan. Mr. Zundel represents that he has been advised by legal counsel with regard to his duties, responsibilities and liabilities as independent fiduciary under the Act and

[1] The applicant represents that a land trust is a device commonly used in Illinois to hold naked title to real estate, the trustee acting upon direction of the beneficiary.

[2] The Lease (Article 6) specifies that the Employer will maintain the required insurance coverage.

that he is fully conversant with such responsibilities. Mr. Zundel has no other relationship with the Employer, Rockwell, the Land Trust or the Plan. Mr. Zundel, who will be responsible for making an independent determination that the proposed loan is appropriate and suitable for the Plan, has examined the terms of the proposed loan and has initially determined that the proposed loan is appropriate and suitable for the Plan. Mr. Zundel will be required to make the same determination immediately prior to consummation of the loan, as a condition to such consummation. Mr. Zundel represents that in addition to reviewing the specific terms and conditions of the proposed loan, he has: (a) examined the overall Plan investment portfolio; (b) considered the cash flow needs of the Plan; (c) given consideration to the necessity of a sale of any Plan assets; (d) examined the diversification of Plan assets in light of the proposed loan investment; and (e) reviewed the terms of the proposed loan as such terms comport with the Plan's investment scheme.

Mr. Zundel will be empowered and directed to enforce the terms of the loan agreements between the Plan, the Land Trust and the Principals, including making demand for timely payment, bringing suit or other appropriate process against the Land Trust and/or the Principals in the event of default, keeping accurate records and reporting at least annually to the Plan's trustees on the performance of the loan, specifically including whether the value of the collateral securing the loan remains equal to at least 150% of the outstanding loan balance. Mr. Zundel will be entitled to such information from the Land Trust, Principals and the Plan as may be reasonably necessary to fulfill his responsibilities and he shall be paid reasonable compensation plus reimbursement for reasonable expenses, if any, including legal or appraisal fees or costs, as agreed upon with the Plan's trustees.

8. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an examption under section 408(a) of the Act because (a) the Plan will receive at least 16½% interest on its investment, which is greater than the rate proposed by an unrelated party, (b) the Land Trust will insure the collateral and add additional collateral so that the value of collateral securing the loan is always at least 150% of the outstanding balance of the loan, and (c) the loan will be approved by and will be administered by an independent fiduciary.

Notice to Interested Persons

Within 10 days after the notice of pendency is published in the **Federal Register**, notice will be given to all Plan participants and beneficiaries by mail, personal delivery, or by posting on employee bulletin boards at the employer's premises which are customarily used for notices to employees. Such notice shall include a copy of the notice of pendency of the exemption as proposed in the **Federal Register** and shall inform interested persons of their right to comment and request a hearing within the time period set forth in the notice of proposed exemption.

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 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 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) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and 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

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and 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.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested 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) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loan by the Plan to the Land Trust for the lesser of $175,000 or 40% of the Plan's assets, based on the terms and conditions set forth above, and to the personal guarantee of repayment by the Principals, provided that the terms of the transactions are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of September, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-26376 Filed 9-23-82; 8:45 am]
BILLING CODE 4510-29-M

[Application No. L-3675]

Proposed Exemption for Certain Transactions Involving the Wells Fargo & Company Group Life Insurance Plan Maintained by Wells Fargo & Company Located in San Francisco, California

AGENCY: Pension and Welfare Benefit Programs Office.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act). The proposed exemption would exempt under certain conditions, the reinsurance by the Central Western Insurance Company (CWIC) of group life insurance contracts sold to Wells Fargo & Company (the Employer) on behalf of the Wells Fargo & Company Group Life Insurance Plan (the Plan) maintained by the Employer. CWIC is a party in interest with respect to the Plan. The proposed exemption, if granted, would affect the Employer, participants and beneficiaries of the Plan, CWIC, and other persons participating in the transactions.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before November 8, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. L-3675. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department of Labor, telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406 (a) and (b) of the Act. The proposed exemption was requested in an application filed on behalf of the Employer, pursuant to section 408(a) of the Act, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Preamble

On August 7, 1979, the Department published a class exemption [Prohibited Transaction Exemption 79-41 (PTE 79-41), 44 FR 46365] which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales of life insurance, health insurance of annuity contracts which fund such plans, if certain conditions are satisfied.

In PTE 79-41, the Department stated its view that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction.

The Department further stated that as of the date of publication of PTE 79-41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated company for insurance, and that unrelated company would, pursuant to an arrangement or understanding, reinsure part or all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemptions, but would instead consider such applications on the merits of each individual case.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Employer is a bank holding company registered under the Bank Holding Company Act of 1956 and is incorporated in the State of California. The Company's principal subsidiary is Wells Fargo Bank, National Association, a national banking association organized under the laws of the United States, and the Employer also pursues bank-related activities through other subsidiaries.

2. The Plan is an employee welfare benefit plan which provides life insurance benefits to employees of the Employer. There are approximately 19,820 participants in the Plan.

3. CWIC is a wholly-owned subsidiary of the Employer. CWIC is a corporation organized under the laws of the State of Arizona, with its principal offices in Phoenix, Arizona. CWIC is engaged in reinsuring risks under group insurance policies. As of December 31, 1981, CWIC's balance sheet assets were approximately $3.7 million.

4. The benefits under the Plan are funded by the Equitable Life Assurance Society (Equitable). Equitable was selected by the Employer on January 1, 1982. This change in direct insurers from the Prudential Insurance Company of America to Equitable was based on providing the Plan participants with the best possible cost effective coverage and was in no way in anticipation of any possible future reinsurance arrangements between CWIC and Equitable. Equitable and CWIC are currently in the process of negotiating a reinsurance agreement. The proposed agreement will involve a certain percentage of the life insurance premiums paid under the Plan. Under the proposed agreement, Equitable would cede a certain percent of the insurance sales to CWIC. CWIC has no other agreements covering the Plan or any other employee benefit plans (and their employers) with respect to which CWIC is a party in interest. Equitable is unrelated to the Employer and to CWIC. The benefits under the Plan are provided unconditionally by Equitable, and the Plan is not a party to the reinsurance transactions.

5. The applicant represents that the subject reinsurance transactions will meet all of the conditions of PTE 79-41 covering direct insurance transactions:

(a) CWIC is a party in interest as described in Act section 3(14)(G) by reason of stock affiliation with the employer maintaining the Plan.

(b) CWIC is licensed to reinsure credit life and credit accident and health insurance in at least one of the United States.

(c) CWIC is audited by the Superintendent of Insurance of the State of Arizona and is presently in good standing. CWIC has received a Certificate of Authority from the Department of Insurance of the State of Arizona.

(d) CWIC underwent a financial examination by the Superintendent of Insurance of the State of Arizona as of December 31, 1980.

(e) The Plan pays no more than adequate consideration for the insurance contracts. Because Equitable

is one of the largest group insurance underwriters in the country and enjoys substantial economies of scale in overall policy administration, the premium charge to the Plan is highly competitive. The reinsurance transactions are not a factor in the premium computation and thus do not in any way affect the cost to the Plan.

(f) No commissions will be paid in connection with either the direct sale of the insurance contracts or with respect to the reinsurance agreement between Equitable and CWIC.

(g) The gross premiums and annuity considerations from reinsurance received in any one calendar year by CWIC for group life and health contracts for plans (and their employers) with respect to which CWIC is a party in interest will not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance in the same calendar year.

6. In summary, the applicant represents that the subject transactions meet the statutory criteria of section 408(a) of the Act because: (1) Plan participants and beneficiaries are afforded insurance protection by Equitable, one of the largest and most experienced group insurers in the United States, at competitive rates arrived at through arm's-length negotiations; (2) CWIC is a sound, viable insurance company which has been in business for four years, and which does a substantial amount of business outside its affiliated group of companies; and (3) each of the protections provided to the Plan and its participants and beneficiaries by PTE 79–41 will be met under the subject reinsurance transactions.

Notice to Interested Persons

Notice of this proposed exemption will be provided to all participants and beneficiaries of the Plan within 14 days of the publication of the notice in the **Federal Register.** Participants who are currently employed will be notified by means of posting an announcement in a place that is customarily used for providing notice to Plan participants. Retired employees will be notified by mail. The notice to interested parties will contain a copy of the proposed exemption and will inform all interested persons of their right to comment and request a hearing.

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 does not relieve a fiduciary or other party in interest from certain other provisions of the Act, 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;

(2) Before an exemption may be granted under section 408(a) of the Act, 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 exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act, 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.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act 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) and (b) of the Act shall not apply to the reinsurance of risks and the receipts of premiums therefrom by CWIC from the group life insurance contracts sold by Equitable to the Employer to provide benefits to the Plan, provided the following conditions are met:

(a) CWIC—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with the Employer that is described in section 3(14) (E) or (G) of the Act,

(2) Is licensed to reinsure credit life and credit accident and health insurance in at least one of the United States or in the District of Columbia,

(3) Has obtained a Certificate of Authority from the Insurance Director of its domiciliary state, Arizona, which has neither been revoked nor suspended; and

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction, or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary state, Arizona) by the Insurance Commissioner of the State of Arizona within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred.

(b) The Plan pays no more than adequate consideration for the group life insurance contracts;

(c) No commissions are paid with respect to the direct sale of the contract, or the reinsurance thereof; and

(d) For each taxable year of CWIC, the gross premiums and annuity considerations received in that taxable year by CWIC for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which CWIC is a party in interest by reason of a relationship to such employer described in section 3(14) (E) or (G) of the Act does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by CWIC. For purposes of this condition (d):

(1) The term "gross premiums and annuity considerations received" means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance, or annuity contracts to such plans (and their employers) by CWIC. This total is to be reduced (in both the numerator and demoninator of the fraction) by experience refunds paid or credited in that taxable year by CWIC.

(2) All premiums and annuity considerations written by CWIC for plans which it alone maintains are to be excluded from both the numerator and the denominator of the fraction.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20 day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc 82-26377 Filed 9-23-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3610]

Proposed Exemption for Certain Transactions Involving the Key Employee Retirement Plan Located in Pensacola, Florida

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed cash sale of an unimproved parcel of real property by the Key Employee Retirement Plan (the Plan) to Mr. Anthony Ciano (Mr. Ciano), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect the Plan and its participants and beneficiaries, Mr. Ciano, and any other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department on or before November 4, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-3610. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and from 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. The proposed exemption was requested in an application filed on behalf of Mr. Ciano, pursuant to section 408(a) of the Act and 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, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the application.

1. The Plan is a profit sharing plan with 60 participants. Messrs. Ciano, G. W. Pape, and R. H. Mothershed, the trustees (the Trustees) of the Plan, are responsible for all Plan investment decisions. Each Trustee is an officer and/or director of Key Ford, Inc. (the Employer), the sponsor of the Plan. As of December 31, 1981, the Plan had total assets of $197,477.

2. The Employer is a dealer in new and used cars and trucks. Mr. Ciano is the president and 100% shareholder of the Employer.

3. In April, 1980, the Plan purchased from an unrelated party an unimproved parcel of real property (the Property) for $167,582. The Property consists of approximately 7.9 acres of land located at the southwest corner of Pensacola Boulevard and Stumpfield Road in Pensacola, Florida. The Property was purchased for long term investment purposes and is unimproved. The only expense the Plan has incurred with respect to the Property since its acquisition is annual real estate taxes of approximately $4,000. The Property is located directly across the highway from the Employer's present principal place of business.

4. The applicant is seeking an exemption to allow the Plan to sell the Property to Mr. Ciano for cash at its appraised fair market value. Mr. G. Pratt Martin, Jr., an MAI appraiser located in Pensacola, Florida, has appraised the Property and has determined that, as of May 21, 1982, it had a fair market value of $209,000. Mr. Martin represents that the value of the Property to Mr. Ciano is not greater than its appraised fair market value.

5. The sale will be for cash and no sales expenses will be incurred by the Plan. The sale of the Property will enable the Plan to dispose of an asset which is slowly appreciating and not producing any income. The sale of the Property, which constitutes over 80% of the Plan's assets,[1] will improve the Plan's liquidity position and enable the Plan to more easily satisfy claims of retiring employees.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because (a) the sale will enable the Plan to dispose of a non-income producing asset at a gain; (b) the sale will be a one-time transaction for cash; (c) the Plan will receive the fair market value of the Property as determined by an independent appraiser; (d) the Plan will not incur any expenses with respect to the sale; and (e) the Trustees represent that the proposed sale is in the best interests of the Plan and its participants and beneficiaries.

Notice to Interested Persons

Within 10 days after publication in the **Federal Register** notice will be provided by registered mail or other receipted delivery methods to all participants in the Plan. Such notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and will inform each participant of his right to comment on or request a hearing regarding the proposed exemption.

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 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 the code, including any

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[1] In this proposed exemption the Department expresses no opinion as to whether the Plan's acquisition and holding of the Property violates any provision of Part 4 of Title I of the Act.

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) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1) (F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and 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

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and 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.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested 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), 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 cash sale of the Property by the Plan to Mr. Ciano for $209,000, provided that this amount is not less than the fair market value of the Property on the date of sale.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of September, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–26378 Filed 9–23–82; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–3669]

Proposed Exemption for Certain Transactions Involving the Misener Marine Profit Sharing Plan Located in St. Petersburg, Florida

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the cash sale of a certain parcel of unimproved real property (the Real property) by the Misener Marine Profit Sharing Plan (the Plan) to Donald and Rebecca Hudson (the Hudsons), who are parties in interest with respect to the Plan. The proposed exemption, if granted, would affect the Plan, the participants and beneficiaries of the Plan, the trustees (the Trustees), Misener Marine Construction, Inc. (the Employer), the Hudsons and other persons participating in the transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before November 8, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D–3669. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department of Labor, telephone (202) 523–8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and from 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. The proposed exemption was requested in an application filed on behalf of the Employer, pursuant to section 408(a) of the Act and 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, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The employer is a closely-held Florida corporation with principal offices located in St. Petersburg Beach, Florida. The Employer has been engaged in the marine construction business in the Gulf Coast area since 1945, and has participated in a broad spectrum of construction projects , including seawalls, marinas, piers, bridges, and pipelines. Robert P. Bayless (Mr. Bayless) is the President of the Employer corporation, and Richard H. Misener (Mr. Misener) is the Chairman of the Employer's Board of Directors.

2. The Plan, which was adopted in 1966, is a profit-sharing plan with 374

participants and assets having a fair market value of approximately $7,924,554 as of October 31, 1981. The assets of the Plan are held in a trust managed by three individual Trustees—Messrs. Bayless, Misener and Theodore H. Knight, Vice President of Production for the Employer. The Trustees are responsible for the investment of the Plan's assets.

3. Mr. Donald Hudson is the Senior Vice President of Operations for the Employer's corporation. He is the owner of 2.72% of the outstanding stock of the Employer and serves as a member of the Employer's Board of Directors. Mr. Hudson's wife, Mrs. Rebecca Hudson, is employed by the Employer as a paralegal assistant. Both Hudsons are participants in the Plan.

4. The Plan is proposing to sell the Hudsons approximately 9,189 square feet of land located in St. Petersburg Beach, Florida. The Real Property is described on page 39 of Plat Book 72 for Pinellas County, Florida as Lot 17, Bahia Shores, Fifth Addition. The Real Property consists of a vacant residential lot which fronts on Boca Ciega Bay. The Plan purchased the Real Property from Havern Enterprises, Inc., an unrelated party, for $40,000 on February 21, 1975. The Real Property was acquired by the Plan for investment purposes and it has not been improved since its acquisition, nor has it produced any income. Real estate taxes on the Real Property are approximately $880 annually.

5. Two independent appraisal reports have determined that the Real Property has a fair market value of $90,000. This amount constitutes less than 1.5 percent of the total value of the Plan's assets. The first appraisal was performed on December 12, 1981 by Ted Jakimier, IFAS/CRA of St. Petersburg, Florida. The second appraisal was performed on March 26, 1982 by Bert F. Finch, Jr., M.A.I., S.R.A. and Donald R. Carlson, who are appraisers with the firm Fogarty & Finch, Inc. (Fogarty), which is located in St. Petersburg, Florida.

Although the Real Property has appreciated significantly over the past seven years, market activity has declined drastically in recent months. The largest decrease has occurred with respect to vacant lot sales, according to the Fogarty appraisal.

6. In light of current market conditions, the Trustees believe that a sale of the Real Property, as based on the $90,000 appraised fair market valuation, will maximize the Plan's investment yield. Accordingly, on February 3, 1982, the Trustees entered into a conditional sales agreement with the Hudsons whereby the Hudsons paid the Trustees $1,000 as an earnest money deposit and agreed to pay $89,000 in cash at closing. The sales agreement is contingent upon the granting of an exemption by the Department. In the interim, the deposit money has been placed in escrow by the Trustees and neither possession nor title to the Real Property has been awarded to the Hudsons. This will be done at closing. The Plan will not be required to pay any real estate commissions or fees in connection with the proposed sale.

7. An independent fiduciary to the Plan, D. Quigg Porter, Jr. (Mr. Porter), Vice President of the Employee Benefit Trust Division of the Northern Trust Company of Chicago, Illinois, has certified in a letter of May 21, 1982 that a cash sale of the Real Property at fair market value would be in the interests of the Plan and its participants and beneficiaries. Mr. Porter states that the proposed sale will improve the Plan's liquidity position and that it will provide the Trustees with the opportunity to diversify the investments of the Plan.

8. In summary, it is represented that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale will enable the Plan to divest itself of a non-income producing asset; (b) the Plan will receive the fair market value of the Real Property, as determined by two independent appraisals, without being required to pay real estate commissions, title fees or any other expenses in connection with the sale; (c) the sale will improve the Plan's liquidity position and provide the Trustees with an opportunity to diversify the Plan's investments; and (d) the Plan's Trustees and an independent fiduciary have determined that a cash sale of the Real Property at fair market value will be in the interests of the Plan and its participants and beneficiaries.

Notice to Interested Persons

Notice of the proposed exemption will be given to all present employees of the Employer within 10 days of the publication of the notice of pendency in the **Federal Register**. The notice will include a copy of the notice of pendency as published in the **Federal Register** and will inform interested persons of their right to comment on and/or to request a hearing within the time period set forth in the notice of pendency. Notice will be provided to participating employees of the Employer by posting the notice on employee bulletin boards found in all operating locations. Field personnel and annuitants will be notified by direct mailing.

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 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 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) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and 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

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and 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.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested 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), 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 cash sale of the Real Property by the Plan to the Hudsons for $90,000, provided this amount is not less than the fair market value of the Real Property on the date the transaction is consummated.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of September, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–26379 Filed 9–23–82; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–3168]

Proposed Exemption for Certain Transactions Involving the Gary Retirement Plan Located in Denver, Colorado

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt a loan (the Loan) of $1,000,000 by the Gary Retirement Plan (the Plan) to Gary Energy Corporation (GEC), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect the Plan, the Plan trustee, the participants and beneficiaries of the Plan, GEC and other persons participating in the transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before November 8, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D–3168. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Department of Labor, telephone (202) 523–8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and from 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. The proposed exemption was requested in an application filed by GEC, pursuant to section 408(a) of the Act and 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, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The Application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a defined contribution pension plan with approximately two hundred participants and total assets of $5,543,893 as of March 18, 1982. The trustee of the Plan is the United Bank of Denver (United Bank), located in Denver, Colorado. Investment decisions for the Plan are made primarily by United Bank although a Plan administrative committee determines the actual asset mix.

2. The Plan is maintained by four Colorado-based organizations having a number of common directors. GEC is engaged in oil field management and operations. The Piton Foundation is a non-profit organization providing grants in the areas of education and social services. Samuel Gary Oil Producer is a sole proprietorship engaged in oil and gas exploration and real estate managment. Colorado Community Resources, Inc. is a non-profit corporation involved in community development projects. The Plan is maintained by GEC and Samuel Gary Oil Producer as a profit sharing plan and by the Piton Foundation and Colorado Community Resources as a money purchase pension plan. These entities sponsor separate plans although all such plans are consolidated into a single document.

3. GEC is requesting an exemption to borrow $1,000,000 from the Plan. This amount represents nearly 18 percent of the Plan's total assets. GEC intends to use the Loan proceeds for leasehold improvements in its office building. The proposed Loan will be evidenced by a promissory note, providing for the repayment of equal annual installments of principal of $200,000 plus interest over a five year period. the Loan will carry interest at an annual rate equal to the greater of 16 percent or ¼ percent above the prime rate charged by First National Bank of Denver (First National) for comparable short term loans. The interest rate will be adjusted daily. In addition, the Plan will be given the right to demand repayment of any or all of the outstanding Loan balance after two years of the date of the making of the Loan.

4. The proposed Loan will be secured by either of two instruments: a one year, irrevocable letter of credit (the Letter of Credit) issued by First National, or a surety bond (the Performance Bond) issued by the Aetna Casualty and Surety Company (Aetna) of Hartford, Connecticut. The Letter of Credit or Performance Bond, the mechanics of which are similar, will be issued in the amount of the Loan and cover past accrued interest and interest which may accrue during the term of the instrument. Each year as the Loan principal and interest are reduced, the amount of the Letter of Credit or Performance Bond will be reduced correspondingly. Should GEC default on the Loan or the parties decide not to renew the designated security instrument, United Bank will call upon either the Letter of Credit or

Performance Bond before the instrument is permitted to lapse.

5. United Bank, which is unrelated to First National, will serve as the independent fiduciary for the proposed Loan. The exemption application discloses that Samuel Gary Oil Producers owns 1,000 shares of the bank holding company owning United Bank and that GEC has outstanding loans with the bank of less than $10,000,000. The amounts representing outstanding shares and loans each constitute less than one percent of the respective items. In addition, the other organizations sponsoring the Plan have no ownership interest in the trustee bank. Moreover, no employees of any of the sponsoring organizations serve as board members or hold positions of influence at United Bank. Conversely, United Bank has no ownership interest or employees in positions of influence at any of the entities maintaining the Plan.

By letters dated March 23, and April 21, 1982, United Bank has made representations regarding the propriety of the proposed Loan investment and the specific duties it will perform on behalf of the Plan as the independent fiduciary. United Bank considers the Loan transaction to be appropriate for the Plan and in the best interests of the participants and beneficiaries. In making this determination, United Bank indicates it has reviewed the terms of the proposed Loan, the interest rate and the security, all of which it believes are favorable to the Plan. In addition, United Bank represents it has viewed the Loan against the portfolio objectives of the Plan. Specifically, United Bank has examined the overall Plan portfolio, considered the cash flow needs of the Plan, considered the assets that might have to be sold, examined the diversification requirements of the Plan in light of the proposed Loan, and examined the Loan in terms of the overall Plan investment scheme.

With respect to its role as the independent fiduciary, United Bank states it is willing to monitor the Loan and will take whatever actions are necessary if any default occurs or the Letter of Credit (or Performance Bond) is not renewed. United Bank reserves the right to call the Letter of Credit or Performance Bond and will not permit the security instrument that is in effect to lapse. United Bank says it may call the Loan after two years, at which time all outstanding principal and interest would be due from GEC. United Bank says it will be responsible to compute the interest on the Loan in the proper manner.

6. In summary, it is represented that the proposed transaction will satisfy the requirements of section 408(a) of the Act because: (a) The Loan will give the Plan a higher rate of return than is ordinarily available to the Plan with respect to its investments; (b) the Loan will be secured by either an irrevocable Letter of Credit issued by First National or a Performance Bond issued by Aetna, either of which can be called at any time, and must be called if the instrument will not be renewed, or the Employer defaults on Loan payments; (c) the terms and conditions of the Loan will be monitored by United Bank; and (d) United Bank, as independent fiduciary to the Plan, has determined the proposed Loan is appropriate for the Plan and is in the best interests of the participants and beneficiaries of the Plan.

Notice to Interested Persons

Notice of the proposed exemption will be given to active participants, inactive participants having deferred vested benefits, retired and disabled participants and the beneficiary of every deceased participant receiving benefits within ten (10) days of the publication of the notice of pendency in the **Federal Register.** The notice will include a copy of the notice of pendency as published in the **Federal Register** and will inform interested persons of their right to comment and/or request a hearing with respect to the pending exemption. Notice will be given by posting a copy of the proposed exemption in conspicuous places customarily reserved for announcements to employees and by first class mail.

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 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 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) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and 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

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and 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.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection wih the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested 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), 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 of $1,000,000 by the Plan to GEC, provided the terms of the Loan are at least as equal to those which the Plan could receive in an arm's length transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and

that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of September, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-26380 Filed 9-23-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3253]

Proposed Exemption for Certain Transactions Involving the Emjay Corporation Master Profit Sharing Plan for Kurek Amusements, Inc., Located in Milwaukee, Wisconsin

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed sale of real property (the Property) by the Emjay Corporation Master Profit Sharing Plan for Kurek Amusements, Inc. (the Plan) to Mr. George Kurek (Kurek), a party in interest with the respect to the Plan. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan and other persons participating in the transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before November 5, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-3253. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from 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. The proposed exemption was requested in an application filed by Kurek, on behalf of the Plan, pursuant to section 408(a) of the Act and 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, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan with seven participants. The Plan is sponsored by the Kurek Amusements, Inc. (the Employer). The Property is known as Tubby's Pub, a small tavern and restaurant, located in Milwaukee, Wisconsin. Kurek and Louis A. Maier, III are co-trustees of the Plan. Kurek is the president of the Employer and sole member of the administrative committee of the Plan which is responsible for investment decisions for the Plan. The Employer is in the process of being sold to an unrelated third party which does not desire to maintain the Plan. As part of the business of winding down the Plan, the administrative committee of the Plan represents that it is necessary to liquidate the investments of the Plan in order to provide sufficient cash to pay benefits to the participants of the Plan. In addition, the trustees of the Plan represent that the proposed sale will be in the best interests of the participants and beneficiaries of the Plan.

2. The Property was purchased by the plan on March 22, 1976 for $85,000 from James and Helen Woods, unrelated third parties. The Plan proposes to sell the Property to Kurek for a cash sum of $92,500. This price was determined to be the fair market value of the Property, as of January 22, 1982, by Richard B. Kuzminski, a qualified independent appraiser from Milwaukee, Wisconsin. No expenses of any kind will be charged the Plan with respect to the sale of the Property.

3. In summary, the applicant represents that the proposed sale of the Property meets the statutory criteria of section 408(a) of the Act because: (a) It will be a one time transaction for cash; (b) the trustees of the Plan represent that the transaction will be in the best interests of the participants and beneficiaries of the Plan; (c) the price of the Property was determined by an independent appraiser; (d) no expenses will be charged the Plan with respect to the sale; and (e) the Plan will soon be terminated and cash is needed for eventual distribution to the participants.

Notice to Interested Persons

Notice will be given to all participants and beneficiaries of the Plan within 10 days of the publication of notice of pendency in the **Federal Register** by mail or posting on the premises of the Employer at locations commonly used for Employee notices. Notice will include a copy of the notice of pendency as it appears in the **Federal Register** as well as a statement informing all interested persons of their right to comment or request a hearing on the exemption.

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 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 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) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and 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

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and 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.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested 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), 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 sale of the Property by the Plan to Kurek for a cash sum of $92,500, provided that this amount is at least the fair market value of the property at the time of the sale.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of September, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–26381 Filed 9–23–82; 8:45 am]

BILLING CODE 4510–29–M

[Application Nos. D–3349 and D–3350]

Proposed Exemption for Certain Transactions Involving the Guthrie Clinic, Ltd. Profit Sharing Plan and Guthrie Clinic, Ltd. Revised Pension Plan Located in Sayre, Pa.

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt for a period of five years the proposed loans of money by the Guthrie Clinic, Ltd. Profit Sharing Plan (The Profit Sharing Plan) and the Guthrie Clinic Ltd. Revised Pension Plan (the Pension plan, collectively, the Plans) to Guthrie Clinic, Ltd. (the Employer), the sponsor of the Plans. The proposed exemption, if granted, would affect the Employer, the participants and beneficiaries of the Plans and other persons participating in the proposed transactions.

DATES: Written comments and request for a public hearing must be received by the Department on or before October 28, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application Nos. D–3349 and D–3350. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department, telephone (202) 523–7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the retrictions of section 406(a) and 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the applications of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and 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, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Profit Sharing Plan, as of December 31, 1981, had approximately 95 participants and assets in the amount of $6,640,422. The Pension Plan, as of December 31, 1981, had approximately 95 participants and assets in the amount of $3,785,674. Girard Bank (the Bank), located in Philadelphia, Pennsylvania, is the trustee of the Plans. The Employer is a medical clinic which employs approximately 130 physicians.

2. The applicant is requesting an exemption which will permit the Plans for a period of five years to loan (the Loans) amounts up to 30% of the assets of each Plan to the Employer. The proceeds from the Loans will be used by the Employer to finance one or more satellite office and medical buildings (the Buildings). The Loans will be secured by a first mortgage on the completed Buildings. The applicant represents that each Building will have a fair market value, as determined by an independent M.A.I. appraiser, of at least 150% of the amount of the Loan and that the fair market value of the Buildings will always be at least 150% of the amount of the outstanding balances on the Loans. The applicant also represents that the Buildings will be adequately issured with the Plans being the named insured under the insurance policies. Each Loan will have a term of seven years with equal annual payments of

principal and interest. The interest rate on the Loans will be the prevailing market rate of interest on loans of this type and will be determined by the Bank. The applicant represents that the market rate of interest on the Loans will provide the Plan with a higher rate of return on its assets than the plan is currently receiving.

3. An independent party, the Bank, will examine the proposed transactions. Prior to the Plans entering into the Loans, the Bank: (1) Must certify that the Loans will be in the best interests of the participants and beneficiaries of the Plans; (2) determine the interest rate on the Loans; (3) certify that the terms and conditions of the Loans are at least as favorable to the Plans as those which the Plans could receive in an arms-length transaction; and (4) agree to monitor the terms and conditions of the Loans on behalf of the Plans.

4. In summary, the applicant represents that the investment by the Plans in the Loans will meet the statutory criteria of section 408(a) of the Act as follows: (1) The trustee of the Plans represents that the Loans will be in the best interests of the participants and beneficiaries of the Plans; (2) the Loans will be approved and monitored by an independent fiduciary; and (3) the Plans will be able to receive a higher rate of interest on their investments than they are receiving presently .

Notice to Interested Persons

Within seven days of its publication in the **Federal Register** a copy of the notice of pendency and a statement advising interested persons of their right to comment or request a hearing will be mailed to all participants and beneficiaries of the Plans.

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 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 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 paritcipants and beneficiaries of the plan and in a prudent fashion in accordance with secion 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) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and 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

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and 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.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writers's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested 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), 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 for a period of five years to the Loans by the Plans to the Employer provided that the terms and conditions of the Loans are at least as favorable to the Plans as those which the Plans could receive in an arms length transaction.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of September, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–26382 Filed 9–23–82; 8:45 am]

BILLING CODE 4510–29–M

[Application Nos. D–3385 and D–3386]

Proposed Exemption for Certain Transactions Involving South Bay Psychiatric Medical Group Profit Sharing Plan; and South Bay Psychiatric Medical Group Money Purchase Plan, Located in Los Angeles, California

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed sales of certain limited partnership interests (the Partnership Interests) by the South Bay Psychiatric Medical Group Profit Sharing Plan (the Profit Sharing Plan) and the South Bay Psychiatric Medical Group Money Purchase Plan (the Money Purchase Plan, collectively, the Plans) to Dr. Edwin Caine (Caine), a disqualified person with respect to the Plans. The proposed exemption, if granted, would affect Caine and other persons participating in the transaction.

Because Caine is the only participant in the Plans, and the sole shareholder of the South Bay Psychiatric Medical Group, the sponsor of the Plans, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3–3(c)(1). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

DATES: Written comments and requests for a public hearing must be received by the Department on or before October 21, 1982.

ADDRESS: All written comments and requests for a hearing (at least three

copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application Nos. D–3385 & D–3386. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department, telephone (202) 523–7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the sanctions resulting from the application of section 4975 of the Code, by reaon of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by Caine, pursuant to section 4975(c)(2) of the Code, and in accordance with procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722. 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 exemtions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The sole participant and trustee of the Plans is Caine. As of June 11, 1982, the Plans had combined assets of $295,000. As a part of their assets, the Plans own the Partnership Interests. The Partnership Interests owned by the Plans and the price paid to acquire such Partnership Interests are as follows: the Profit Sharing Plan, 3.5% interest in 1108 18th St. Associates (the 18th St. Assoc.) for $19,250; 6.2% interest in Chelsea Avenue Associates (the Chelsea Assoc.) for $14,000; the Money Purchase Plan, 6.5% interest in 18th St. Assoc. for $35,750; 11.5% interest in Chelsea Assoc. for $26,000. All the Partnership Interests were purchased by the Plans in 1979 from an unrelated party.

2. The Ernest Auerback Company (Auerback) which is located in Santa Monica, California is the general partner of the 18th St. Assoc. and the Chelsea Assoc. (together, the Partnerships). The sole asset of each of the Partnerships is a condominium apartment building. The applicant represents that despite a concerted effort by Auerback over a two year period the Partnerships have been unable to sell their condominium units (the Units) and that each Partnership is operating at a loss. The applicant further represents that in order to save the Partnership projects from foreclosure by the construction lender, Auerback has suggested that each limited partner (the Limited Partner) of the Partnerships purchase a Unit from such Partnership. The price of the Unit would be the same price that the Unit has been offered for sale to the general public. After the purchase by the Limited Partner of a Unit, the Limited Partner will have no residual interest in the Partnerships. Auerback represents that if the Limited Partners do not purchase the Units "it is very likely that the value of each entire Partnership Interest will be substantially reduced due to the continuing interest carrying costs and operating expenses to maintain the Units." The initial investment which was used by the Limited Partner would be applied as a down payment on the Unit and the remainder of the purchase price would be financed through unrelated lenders.

3. The applicant is requesting an exemption which will permit Caine to purchase the Partnership Interests from the Plans for cash in the amount of $95,000, which is the original cost to the Plans of their Partnership Interests. Caine represents that such purchase will prevent the Plans from having to obtain a substantial loan to purchase the Units which already represent a large percentage of the assets of the Plans. In addition, Caine represents that the purchase will allow the Plans to recoup their investment in the Partnerships which do not provide the Plans with any income and which are having substantial financial difficulties.

4. In summary, the applicant represents that the proposed purchases will meet the criteria of section 408(a) of the Act as follows: (1) The trustee of the Plans represents that it is in the best interests of the Plans' participant; (2) the Plans will be able to recoup their money form a non-income producing investment which is in serious financial difficulty; and (3) the Plans will not be forced to add additional funds to an investment which is in serious financial difficulty.

Notice to Interested Persons

This notice of pendency will constitute the only notice to interested persons.

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 4975(c)(2) of the Code does not relieve a fiduciary or disqualified person from certain other provisions of the Code, including any prohibited transaction provisions to which the exemption does not apply 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) The proposed exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under 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

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of 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.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the addresss set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722. If the exemption is granted, the sanctions resulting from the 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 sale by the Plans of their Partnership Interests to Caine for cash in the amount of $95,000, provided that this is at least the fair market value of the Partnership Interests at the time of sale.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of September, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-26383 Filed 9-23-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2791]

Proposed Exemption for Certain Transactions Involving Metropolitan Mortgage and Securities Co., Inc. Located in Spokane, Washington

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt: (1) the past and proposed purchases of debt securities (the Debentures) issued by Metropolitan Mortgage & Securities Co., Inc. (Metropolitan) to those self-employed retirement plans (Keogh Plans) and individual retirement accounts (IRAs), (the IRAs and Keogh Plans are collectively referred to as the Plans), for which Metropolitan is also acting as a custodian; and (2) the past and proposed extension of credit between the Plans and Metropolitan. The proposed exemption, if granted, would affect Metropolitan, the participants and beneficiaries of the Plans and other persons participating in the transactions. To the extent that an IRA meets the conditions contained in 29 CFR 2510.3-2(d) and the Keogh Plans do not have an employee as defined in 29 CFR 2510.3-3(b), there is no jurisdiction over the respective plans under Title I of the Act. However, for purposes of this exemption there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

DATES: Written comments must be received by the Department on or before November 10, 1982.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective July 12, 1977.

ADDRESS: All written comments (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. D-2791. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Paul R. Antsen of the Department, telephone (202) 523-6915. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) of the Act and/or from 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. The proposed exemption was requested in an application filed by counsel on behalf of Metropolitan, 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, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application in file with the Department for the complete representations of the applicant.

1. Metropolitan is primarily engaged in the business of real estate financing by purchasing real estate contracts at a discount and making personal and business loans secured by real estate either in the form of first or second mortgages or real estate contracts. Metropolitan has financed its real estate contract purchasing and lending activities almost exclusively through the public sale of the Debentures. Metropolitan was incorporated in the State of Washington in 1953 and is subject to Washington State laws regulating debenture companies because it obtains its capital needs through public offerings of debt securities. These laws, which are designed to protect the interests of investors, including those holding the Debentures, establish minimum capital requirements and certain debt-to-equity ratios, set limits on use of short term public debt securities and prohibit certain interlocking directorships with other financial institutions.

2. To date the Debentures have been issued in two forms. Between July 12, 1977 and December 5, 1979 the Debentures sold to the Plans were pension debenture bonds (Pension Bonds). Because the Pension Bonds were only sold intrastate, they were exempt from registration with the Securities and Exchange Commission (the SEC) based on section 3(a)(11) of the Securities Act of 1933. However, the Pension Bonds were registered in compliance with the Securities Division of the Washington State Business and Professions Administration. The Pension Bonds were issued in denominations of $100 at an interest rate of eight percent with terms ranging from one to ten years from date of purchase. The prospectus for the Pension Bonds stated that purchasers had an undivided proportionate interest in selected real estate contracts and mortgages maintained in a designated general ledger account which were pledged as security for respective bond holding interests.

On July 6, 1979 a new series of the Debentures was issued (the Investment Debentures). The Investment Debentures were issued under a trust indenture (the Indenture) dated July 6, 1979 and a supplement thereto dated October 3, 1980 between Metropolitan and Seattle-First National Bank (Sea-First). Under the terms of the Indenture, Sea-First was obligated to oversee and, if necessary, to take action to enforce fulfillment of Metropolitan's obligations. Because the Investment Debentures were to be sold interstate they were registered with the SEC and applicable state securities commissions. The Investment Debentures were sold in two denominations—$100 and $5,000 with varying interest rates and terms ranging from six months to ten years.

No public trading market for either the Pension Bonds or the Investment Debentures exists and it is unlikely that

such a market will develop. The Pension Bonds have a redemption feature; howevever, a premature redemption fee of one percent of the amount redeemed (not less than $25 or more than $1,000) will be charged for redemption prior to the maturity date. While the Investment Debentures will be prepaid upon request in the event of death, they are not otherwise unilaterally redeemable prior to maturity.

3. Metropolitan offers the Debentures for sale on a continuing best efforts basis through Metropolitan Investment Securities, Inc. (Investment), a wholly owned subsidiary. Investment is registered as a broker-dealer with the SEC. Investment engages several independent sales representatives (the Sales Representatives) to solicit sales of the Debentures. Although the Sales Representatives are not employees of Metropolitan or Investment, they do have a close relationship. while spending most of their time in the field marketing the Debentures, the Sales Representatives are provided office space in Metropolitan's home office. The Sales Representatives do not sell securities other than those of Metropolitan. Purchases of the Debentures pay only the purchase price which does not include any direct commission, brokerage fee or other amount to Metropolitan, Investment or the Sales Representatives in connection with such sales. However Metropolitan does reimburse Investment for commissions paid by Investment to the Sales Representatives on sales of such securities. Metropolitan suggests that this is a typical arrangement and customary for market transactions of this type.

4. Metropolitan further suggests that other forms of debt securities may be issued in the future pursuant to a subsequent trust indenture or prospectus and requests that such future issues be included within the scope of this exemption. Metropolitan represents that it would always comply with the applicable state and federal securities laws in the issuance of any security to be marketed to IRAs or Keogh Plans. The Department has agreed to this request, consequently the scope of the term "the Debentures" as used in this exemption includes any debt security issued or to be issued by Metropolitan.

5. Metropolitan has established a prototype custodial account program for Keogh Plans and IRAs (hereinafter referred to as "Custodial Accounts"). The plan and custodial account documents for the IRAs were submitted to the Internal Revenue Service (the Service) for a determination as to their qualified status under the pertinent provisions of the Code. The Service approved the request for the IRAs on July 12, 1977. On April 13, 1977 Metropolitan requested approval from the Service for its prototype Keogh Plan. By letter dated June 10, 1977 the Service responded that under the applicable revenue procedure Keogh Plans of sponsoring organizations like Metropolitan which are not trade or professional associations, banks, insurance companies or regulated investment companies are not eligible to receive such determination letters. Thereupon, Metropolitan advised the sponsoring employers of such Keogh Plans to request individual determinations. To the best of Metropolitan's knowledge, no employer seeking such approval has failed to receive a requested favorable determination.

6. By letter dated November 10, 1976 Metropolitan received permission from the Service under the provisions of Code sections 401(d) and 408(a)(2), to serve as a custodian for the Keogh Plans and IRAs. In serving as custodian for such plans, Metropolitan was authorized and acts as a passive custodian within the meaning of Temporary Income Tax Regulation section 11.401(d)(1)–1(g)(1). As a passive custodian, Metropolitan is authorized to acquire and hold particular investments only as directed by each individual participant of the Plan involved or in accordance with the express terms of a Custodial Account.

7. The Debentures were not designed solely or primarily for the Plans but are investments directed to a broad market. In this regard, at least fifty (50) percent of any offering of the Debentures will be sold to parties with respect to which Metropolitan does not act as custodian. However, the Debentures have been and it is contemplated that they would be sold to IRAs (including IRAs established and maintained by employees of Metropolitan) and Keogh Plans. For the convenience and cost savings to purchasers that are IRAs and Keogh Plans, Metropolitan has agreed to act as custodian with respect to such plans.

Thus, Metropolitan has become a party in interest and/or disqualified person with respect to the Plans solely by virtue of providing custodial services for the Plans. Because of prior purchases of the Debentures after the service provider relationship was established and the desire to continue the above described practice, Metropolitan has requested an exemption for both retroactive and prospective relief. In addition, because of the nature of the security being acquired combined with Metropolitan's service provider role, the purchase of the Debentures by the Plans constitutes an extenson of credit to a party in interest and/or disqualified person.

8. In marketing the Debentures the Sales Representatives would also provide existing and potential customers with information regarding the establishment of Custodial Accounts. Any customer choosing to adopt a Custodial Account does so with the understanding that the acquisition of the Debentures is the only investment option available. To overcome concerns regarding lack of investment diversification the applicant notes that participants in the Custodial Accounts are free to establish or participate in other IRAs and/or Keogh Plans. In addition, recent tax law changes now permit individuals to establish IRAs in addition to participating in qualified pension or profit sharing plans.

With respect to future transactions, Metropolitan has agreed to disclose in writing the nature of the relationship between the Sales Representatives and Metropolitan. Such disclosure statement will also provide that decisions regarding investment in the Debentures are the sole responsibility of the individual buyers as fiduciaries for their respective Plan or Custodial Account. Metropolitan has also agreed that such fiduciary will acknowledge his role in writing as additional evidence of independent judgment. While the applicant represents that heretofore decisions had been made by such independent parties, Metropolitan has agreed to such written documentation as further evidence of the arms length nature of the transactions.

9. As of May 27, 1981, Metropolitan was acting as custodian for approximately 355 IRAs and Keogh Plans. The total asset value of the Plans on that date was $1,340,000 with the average participant account having an asset value of less than $4,000. The applicant notes that the transactions described in this application parallel to a great extent the transactions exempted under section III(f) of Prohibited Transaction Exemption 77–9 (PTE 77–9, 42 FR 32395, Amended 44 FR 1479). PTE 77–9 exempts from section 406(a)(1) (A) through (D) and 406(b) of the Act and section 4975(c)(1) of the Code the purchase by plans of securities from investment companies (or their affiliates) which are fiduciaries or service providers by reason of sponsorship of a master of prototype plan or provision of non-discretionary trust or custodial services in connection therewith. The applicant further

represents that the transactions involved in the application are customary, particularly by banks and other financial institutions that offer custodial services and compete with Metropolitan for investment capital.

10. In summary, the applicant represents that the transactions satisfy the statutory criteria of section 408(a) of the Act and/or section 4975(c)(2) of the Code in that:

(a) Investment decisions with respect to the Debentures have been and would be made by a fiduciary on behalf of the respective Plans or Custodial Accounts who is independent of Metropolitan or any affiliate thereof;

(b) Metropolitan has served and will serve only as a custodian with respect to the assets of the Plans and Custodial Accounts and has no authority which could make them a fiduciary with respect to investment decisions regarding such assets;

(c) The purchase of the Debentures by the Plans and Custodial Accounts has been and would be made in the same manner as other investors in the normal course of business; and

(d) At least fifty (50) percent of the Debentures will be sold to parties with respect to which Metropolitan does not act as custodian.

Notice to Interested Persons

Within fifteen (15) days following publication of the notice of pendency in the **Federal Register**, notice of the proposed exemption will be mailed to all interested persons including each of the participants in the Plans. The notice will contain a copy of the proposed exemption as published in the **Federal Register** and will include a statement advising them of their right to comment on the proposed exemption within the time period set forth above.

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 the Code, including any prohibited transaction provisions to which the exemption does not apply and, to the extent jurisdiction exists under Title I of the Act, 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) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act and/or section 4975(c)(1) (E) and (F) of the Code;

(3) 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

(4) The proposed exemption, 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.

Written Comments

All interested persons are invited to submit written comments on the pending exemption to the address above, within the time period set forth. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and/or 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/or 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 July 12, 1977 to the purchase by the Plans or Custodial Accounts of the Debentures issued by Metropolitan as described herein and to the extension of credit between Metropolitan and the Plans or Custodial Accounts resulting from the purchase of the Debentures provided that the following conditions are met with respect to the purchase of the Debentures:

(1) The purchase price paid for the Debentures does not exceed fair market value at the time of acquisition; and

(2) Effective 30 days after date of publication of this notice in the **Federal Register** the exemption is available only if each of the following conditions are satisfied in addition to the condition described in section (1) of this exemption:

(a) The Sales Representatives have disclosed in writing the nature of their relationship to Metropolitan and Investment and that they are not acting as an investment advisor or other fiduciary with regard to investment decisions of the Plans or Custodial Accounts. Such disclosure also states that all decisions with respect to purchase of the Debentures are the sole responsibility of the individual buyers as a fiduciary for their respective Plan or Custodial Account; and

(b) Following receipt of the information required to be disclosed and prior to the execution of the transaction, a plan fiduciary unrelated to Metropolitan, Investment or the Sales Representatives acknowledges in writing receipt of the information described in subsection (a) of this exemption and approves the transaction on behalf of the Plan or Custodial Account.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions that are the subject of the exemption.

Signed at Washington, D.C., this 16th day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–26384 Filed 9–23–82; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 82–159; Exemption Application No. D–3371]

Exemption From the Prohibitions for Certain Transactions Involving the Donald H. Bohne, D.D.S., P.A. Profit Sharing Plan Located in Tucker, Georgia

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption will permit the sale of two mortgage loans (the Mortgages) to the Donald H. Bohne, D.D.S., P.A. Profit Sharing Plan (the Plan) by Dr. Donald H. Bohne (Dr. Bohne), a disqualified person with respect to the Plan. Because Dr. Bohne is the sole shareholder of Donald H. Bohne, D.D.S., P.A. and the only participant in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Internal Revenue Code of 1954 (the Code).

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of 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; (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 6, 1982, notice was published in the **Federal Register** (47 FR 34218) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from 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, for the above-described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is 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.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 4975(c)(2) of the Code does not relieve a fiduciary or other disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 4975(c)(2) of the Code and the procedures set forth in Rev. Proc. 75–26, 1975–1, C.B. 722, and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participant and beneficiaries; and

(c) It is protective of the rights of the participant and beneficiaries of the Plan.

Accordingly, 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 of the Mortgages by Dr. Bohne to the Plan (including the assumption by the Plan of Dr. Bohne's liabilities under certain first mortgages, as described in the notice of pendency), provided that the sales price of each Mortgage is not greater than its fair market value as of the date of sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 20th day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–26385 Filed 9–23–82; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 82–160; Exemption Application Nos. D–3408 and D–3409]

Exemption From the Prohibitions for Certain Transactions Involving the Allan D. Stilwell, M.D. Profit Sharing Plan and Trust, and the Allan D. Stilwell, M.D. Money Purchase Plan and Trust Located in Troy, Mich.

AGENCY: Pension and Welfare Benefit Programs Offices, Labor..

ACTION: Grant of individual exemption.

SUMMARY: This exemption will permit the proposed sale of investment grade diamonds (the Diamonds) by the Allan D. Stilwell, M.D. Profit Sharing and Money Purchase Plans and Trusts (the Plans) to Dr. Allan D. Stilwell (Dr. Stilwell), a disqualified person with respect to the Plans. Because Dr. Stilwell is the sole shareholder of Allan D. Stilwell, M.D., P.C., the sponsor of the Plans, and the only participant in the Plans, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Internal Revenue Code of 1954 (the Code).

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of 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; (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 6, 1982, notice was published in the **Federal Register** (47 FR 34233) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from 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, for the above-described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and

representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is 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.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 4975(c)(2) of the Code does not relieve a fiduciary or other disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 4975(c)(2) of the Code and the procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722, and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participant and beneficiaries; and

(c) It is protective of the rights of the participant and beneficiaries of the Plans.

Accordingly, 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 of the Diamonds by the Plans to Dr. Stilwell, provided that the sales price for each Diamond is not less than its fair market value as of the date of sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C. this 20th day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82–26386 Filed 9–23–82; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 82–153; Exemption Application No. D–2981]

Exemption From the Prohibitions for Certain Transactions Involving Marsh and McLennan Asset Management Company and Related Companies Located in Boston, Massachusetts, and New York, New York

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits certain subsidiaries of the Marsh and McLennan Asset Management Company (AMC) to recommend that employee benefit plans (the Plans) with respect to which such subsidiaries are fiduciaries by reason of providing investment management services, invest in one or more commingled investment vehicles (the Trusts) which are designed for the collective investment by employee benefit plans in real estate and which have retained another affiliate of AMC to provide investment advice or investment management services regarding such real estate investments.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of 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; (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 6, 1982, notice was published in the **Federal Register** (47 FR 34249) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406 (a) and (b) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (F) of the Code, for transactions described in an application filed on behalf of AMC. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is 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.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include 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 or her 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 the fact the transaction is the subject of an

exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and 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 determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly, the restrictions of section 406 (a) and (b) 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 (F) of the Code, shall not apply to the investment of the Plans' assets in one or more of the Trusts as described in the notice of pendency, provided that the terms and conditions of such investments are at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 20th day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-26387 Filed 9-23-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-154; Exemption Application No. D-3061]

Exemption From the Prohibitions for Certain Transactions Involving the Fletcher Printing Company Profit Sharing Plan and Trust Located in Lakeland, Florida

AGENCY: Pension and Welfare Benefit Programs.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the proposed leasing of office space (the Lease) by the Fletcher Printing Company Profit Sharing Plan and Trust (the Plan) to Fletcher Printing Company (the Employer), the sponsor of the Plan.

FOR FURTHER INFORMATION CONTACT: Katherine D. Lewis of 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; (202) 523-8972. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 20, 1982, notice was published in the **Federal Register** (47 FR 31476) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above-described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been distributed to interested persons in compliance with the notification provisions in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is 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.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include 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 or her 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 the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and 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 determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly 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 to the Lease of office space by the Plan to the Employer as described in the notice of proposed exemption, provided that the terms and conditions of the Lease remain at least as favorable to the Plan as would otherwise be available in an arm's length transaction with an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 20th day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-26388 Filed 9-23-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-155; Exemption Application No. D-3162]

Exemption From the Prohibitions for Certain Transactions Involving Middletown Surgeons, Inc. Revised Pension Plan Located in Middletown, Ohio

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the proposed purchase by Middletown Surgeons, Inc. Revised Pension Plan (the Plan) from John W. Barnes, M.D. (the Owner), a party in interest with respect to the Plan, of 83,000 shares of common stock of Assembly Machines, Inc. (AMi), an unrelated company, in exchange for cash and a note receivable (the Note) executed by the Owner and currently held by the Plan.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of 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; (202) 523-8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 6, 1982, notice was published in the **Federal Register** (47 FR 34232) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above-mentioned transaction, which was described in an application filed on behalf of the Owner. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. Since the Owner is the only participant or beneficiary of the Plan who will be affected by the proposed transaction, it was determined that there was no need to distribute the notice of proposed exemption to interested persons. No public comments and no requests for a hearing were received by the Department.

The notice of pendence was issued and the exemption is 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.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include 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 or her 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 the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and 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 determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the Plan's purchase of the Owner's 83,000 shares of AMI common stock in exchange for cash and the Note, provided that the total purchase price does not exceed the fair market value of such shares at the time of the purchase.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 20th day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-26389 Filed 9-23-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-156; Exemption Application No. D-3183]

Exemption From the Prohibitions for Certain Transactions Involving the Automotive Sales Co. Employee Stock Ownership Plan Located in Phoenix, Arizona

AGENCY: Pension and Welfare Benefit Programs Office, Labor

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits: (1) Certain indemnifications by the Automotive Sales Company Employee Stock Ownership Plan (the Plan) for the benefit of HJS, Inc. (the Employer), regarding the proposed sale of the assets of the Employer; and (2) the proposed sale of a portion of certain real property (the Property) by the Plan to the Employer.

FOR FURTHER INFORMATION CONTACT: Richard Small of 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; (202) 523-7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 23, 1982, notice was published in the **Federal Register** (47 FR 31985) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above described transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicants have represented that they have satisfied the notification provisions as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is 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.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include 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 or her 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 the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and 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 determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, 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: (1) Certain indemnifications by the Plan for the benefit of the Employer; and (2) the proposed sale of a portion of the Property by the Plan to the Employer provided that the Plan receives at least the fair market value of the portion of the Property at the time of the sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 20th day of September.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-26390 Filed 9-23-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-157; Exemption Application No. D-3390]

Exemption From the Prohibitions for Certain Transactions Involving the Bay View Federal Savings and Loan Association Profit Sharing Plan Located in San Mateo, California

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption will permit, effective March 1, 1982, the cash sale by the Bay View Federal Savings and Loan Association Profit Sharing Plan (the Plan) of 39 mortgage loans (the Mortgage Loans) to Bay View Federal Savings and Loan Association (the Employer), the sponsor of the Plan.

EFFECTIVE DATE: March 1, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of 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; (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 20, 1982, notice was published in the **Federal Register** (47 FR 31474) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above-described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been provided to interested persons in accordance with the provisions of the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is 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.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include 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 or her 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 the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and 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 determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly 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 March 1, 1982, to the cash sale of the Mortgage Loans by the Plan to the Employer for $2,216,815, provided that this amount was not less than the fair market value of the Mortgage Loans on the date of sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject to this exemption.

Signed at Washington, D.C., this 20th day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82–26391 Filed 9–23–82; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 82–158; Exemption Application No. D–3499]

Exemption From the Prohibitions for Certain Transactions Involving the L. Michael Feingold, Inc. Profit Sharing Plan Located in Huntington Beach, California

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption will permit the sale to the L. Michael Feingold, Inc. Profit Sharing Plan (the Plan) of an interest in a mortgage note (the Mortgage) by Dr. L. Michael Feingold (Dr. Feingold), a party in interest with respect to the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of 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; (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 20, 1982, notice was published in the **Federal Register** (47 FR 31468) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above-described transction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant

has represented that a copy of the notice was provided to interested persons in accordance with the provisions of the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is 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.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include 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 or her 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 the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and 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 determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly 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 to the sale by Dr. Feingold to the Plan of his ⅓ interest in the Mortgage for $76,343.47 provided that the price paid is not greater then the fair market value of the interest on the date of sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C. this 20th day of September 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefits Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82–26392 Filed 9–23–82; 8:45 am]

BILLING CODE 4510–29–M

Employment and Training Administration

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

Pursuant to the court order in *Julian R. Woodrum* v. *Donovan et. al.* Slip OP. 82–60 (July 26, 1982), which remanded the matter for further administrative proceedings we hereby publish notice of receipt of plaintiff's petition. The Director, of the Office of Trade Adjustment Assistance, Employment and Training Administration is instituting an investigation to comply with the above referenced court order by giving notice of institution of investigation concerning (1) whether there is substantial ownership and control of Capital Chrysler Plymouth of Montgomery, Inc., Montgomery, West Virginia by the Chrysler Corporation; and (2) whether the nature of work performed by the petitioners, employees of Capital Chrysler Plymouth of Montgomery, Inc., a car dealership, constitues production within the meaning of the Trade Act of 1974.

The purpose of the investigation is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than ten days after publication in the **Federal Register.**

Interested persons are invited to submit written comments regarding the subject matter of the investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 4, 1982.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 23rd day of September 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers or former workers of)—	Location	Date received	Date of petition	Petition No.	Articles produced
Capital Chrysler Plymouth of Montgomery, Inc. (workers).	Montgomery, WV	Sept. 8, 1980	Aug. 22, 1980	TA–W–13,794	Dealership—auto.

[FR Doc. 82–26523 Filed 9–23–82; 11:31 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Subcommittee on Mechanical Engineering and Applied Mechanics, Advisory Committee for Engineering; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Mechanical Engineering and Applied Mechanics (MEAM).

Date and Time: October 14th and 15th, 1982—9 a.m. to 5 p.m. each day.

Type of Meeting:

October 14—9:00 a.m. to 12:15 p.m.—Open
1:30 p.m. to 5:00 p.m.—Closed

October 15—9:00 a.m. to 1:00 p.m.—Open;
2:00 p.m. to 5:00 p.m.—Closed.

Contact Person: Dr. R. M. Bowen, Division Director, Mechanical Engineering and Applied Mechanics, Room 1108, National Science Foundation, Washington, D.C. 20550; (202) 357–9542.

Summary/Minutes: May be obtained from Hope Duckett, Division of Mechanical Engineering and Applied Mechanics, Room 1108, National Science Foundation, Washington, D.C. 20550; (202) 357–9542.

Purpose of Subcommittee: To provide directions for Mechanical Engineering and Applied Mechanics research.

Agenda: Thursday October 14th—Open—9 a.m. to 12:15 p.m., Room 540

9:00—Welcome by Dr. J. Slaughter, Director, NSF and Dr J. Sanderson, Assistant Director for Engineering
10:00—Questions and Answers
10:15—Briefing of Division Programs
11:45—Questions and Answers
12:15—Recess for Lunch

Thursday October 14th—Closed—1:30 p.m. to 5:00 p.m., Room 540

1:30—Review and comparison of declined proposals (and supporting documentation) with successful awards under the Mechanical Engineering and Applied Mechanics Division, Including review of peer review materials and other privileged material

Friday October 15—Open—9:00 a.m. to 1:00 p.m., Room 540

9:00—Oral reports from Subcommittee
9:30—Subcommittee discussion of future directions of programs
10:30—Subcommittee discussion of division-wide concerns
11:30—Drafting of preliminary Subcommittee response

Friday October 15—Closed—2:00 p.m. to 5:00 p.m., Room 540

2:00—Further review of peer review process on individual grants and declinations
5:00—Adjourn

Reason for Closing: The Subcommittee will be reviewing grant and declination jackets which contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This session will also include a review of the peer review documentation pretaining to applicants. These matters are with exemption (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determination by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

September 21, 1982.

[FR Doc. 82–26403–Filed 9–23–82; 8:45 am]

BILLING CODE 7555–01–M

Subpanel for History and Philosophy of Science; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subpanel for History and Philosophy of Science Advisory Committee for Social and Economic Science.

Date and Time: October 14th, 15th and 16th, 1982, 9:00 a.m. to 5:00 p.m. each day.

Place: Room 421, National Science Foundations, 1800 G Street, N.W., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Ronald J. Overmann, Program Director, History and Philosophy of Science Program, Room 312, National Science Foundation, Washington, D.C. 20550, telephone (202) 357–9677.

Purpose of Subpanel: To provide advice and recommendation concerning support for research in History and Philosophy of Science.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

September 21, 1982.

[FR Doc. 82–26404 Filed 9–23–82; 8:45 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 12665; 812–5219]

American General Life Insurance Company of New York, et al; Filing of Application

September 16, 1982.

American General Life Insurance Company of New York ("AGNY"), American General Life Insurance Company of New York Separate Account E ("Account E") and American General Capital Distributors, Inc. ("AG Capital") (together "Applicants") filed an application on June 21, 1982, and an amendment thereto on September 3, 1982, for an order of the Commission exempting Applicants to the extent requested pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") from the provisions of Sections 2(a)(32), 2(a)(35), 22(c), 26(a), 26(a)(2)(C), 27(a)(3), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rule 22c–1 thereunder and granting, pursuant to Section 11 of the Act, approval of the terms of certain offers of exchange. Account E, a separate account of AGNY, was created for the purpose of investing the net purchase payments received by AGNY for single payment and periodic payment variable annuity contracts which it sells. Account E is registered under the Act as a unit investment trust. AGNY is its depositor and AG Capital is its principal underwriter. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations made therein, which are summarized below.

Until recently, AGNY offered certain variable annuity contracts funded through Account E ("Current Contracts") under which contractowners could, from time to time, cause interests in Account E to be transferred for investment purposes among one of three divisions of Account E (divisions one through three), each of which invests its assets solely in a different registered open-end management investment company. The Commission has granted exemptions from certain sections of the Act and

rules thereunder and approval under Section 11 of the Act in connection with the activities and operation of Account E in offering the Current Contracts. As a consequence of Revenue Ruling 81–225, AGNY temporarily ceased sales of Current Contracts. Since two new divisions (divisions six and seven) of Account E have become available, the acceptance of purchase payments under Current Contracts has been resumed. Transfers into divisions six and seven under Current Contracts are effected pursuant to Rule 6c–6(T) under the Act. Under Current Contracts offered and sold subsequent to the availability of divisions six and seven, only those divisions are available. Account E intends to offer a new division (division 8), to which owners of Current Contracts may cause their interests to be invested subject to the same conditions previously applicable to Current Contracts. The fee for any transfer is $5 under Current Contracts, and no change in existing fees relating to transfers under Current Contracts is being sought by Applicants.

AGNY now intends to offer a new class of variable annuity contracts (the "Proposed Contracts") in place of the Current Contracts. The Proposed Contracts provide that contractowners may elect to have their interests in Account E allocated, from time to time, among not more than three divisions of Account E (divisions six through eight), subject to certain conditions. Transfers among divisions under the Proposed Contracts are effected at net asset value, subject only to a fixed charge of $10 with respect to each such transfer. No transfer charge will be imposed in connection with certain transfers effected at or subsequent to annuitization.

Under the Proposed Contracts, premium taxes will be deducted as of the annuity date, although AGNY may have actually paid the tax prior to that time. A withdrawal charge will be imposed on surrenders during the accumulation period, calculated as a percentage of the dollar amount of purchase payments made during the preceding 72 months which are withdrawn; it is always assumed that the earliest payments during a 72-month period are withdrawn first. The withdrawal charge equals the sum of: 1% of purchase payments made during the 61st through 72nd months prior to surrender; 2% of purchase payments made during the 49th through 60th months; 3% of purchase payments made during the 37th through 48th months; 4% of purchase payments made during the 25th through 36th months; 5% of purchase payments made during the 13th through 24th months; and 6% of purchase payments made during the first 12 months prior to surrender.

If a partial surrender is made which reduces the accumulated value of the contract by less than 80% of the accumulated value immediately preceding such partial surrender, no withdrawal charge will be imposed at that time on any amount withdrawn (the "Exempt Amount") which, when added to all other Exempt Amounts previously withdrawn over the life of the contract, does not exceed the sum of the following: 100% of purchase payments made more than 72 months prior to the partial surrender; 50% of purchase payments made during the 61st through 72nd months; 40% of purchase payments made during the 49th through 60th months; 30% of purchase payments made during the 37th through 48th months; 20% of purchase payments made during the 25th through 36th months; and 10% of purchase payments made during the 13th through 24th months prior to the partial surrender. If the partial surrender is for more than the Exempt Amount so calculated, the same withdrawal charge will be imposed as would be imposed on a total surrender in the amount of such excess. Once a withdrawal charge has been imposed on any purchase payment or portion of a purchase payment, that purchase payment or portion will not thereafter be considered as a purchase payment for purposes of calculating either the withdrawal charge or the Exempt Amount.

If a partial surrender is made which reduces the accumulated value of the contract by 80% or more of the accumulated value of the contract immediately preceding such partial surrender, or if a total surrender is made, the amount of the withdrawal charge imposed will be adjusted to reflect a withdrawal charge on Exempt Amounts withdrawn without a withdrawal charge pursuant to any partial surrenders made during the preceding 12 months.

The withdrawal charge also will be imposed in connection with certain settlement options under the Proposed Contracts. Although imposed on or after the annuity date, these charges will be based on purchase payments, as described above in connection with surrenders made during the accumulation period.

Under the Proposed Contracts, AGNY will charge the Account E an amount (the "Asset Charge"), calculated daily, at an annual rate of 1.25% of the average daily net asset value of Account E assets allocable to the Proposed Contracts. The Assets Charge is intended to cover additional anticipated administrative expenses and to compensate the Company for assuming mortality risks. Applicants estimate that compensation for assumption of the mortality risk constitutes ⅘ths of the Asset Charge and additional anticipated administrative expenses constitute approximately ⅕th of the Asset Charge. The Asset Charge is guaranteed and may not be increased by AGNY.

Under the Proposed Contracts, AGNY will also receive reimbursement for administrative expenses from an annual contract maintenance charge in the amount of $30 per contract, which will be assessed on the last day of each contract year during the Accumulation Period. In the case of surrender of the contract, this charge will be prorated on a monthly basis for each month or part of a month during the contract year. This charge is not guaranteed and may be raised or lowered in AGNY's discretion as to contracts outstanding at any time and/or as to contracts issued subsequently.

Applicants represent that the administrative charges under the Proposed Contracts are reasonable, in amounts not exceeding anticipated administrative expenses, and not properly chargeable to sales or promotional activities within the meaning of the Act. Applicants also assert that the level of the Asset Charge, annual maintenance charge, transfer fees and premium taxes is cost-related, reasonable and consistent with industry practice.

Exemptive Relief Requested

Applicants request exemptions from sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(a)(3), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rule 22c–1 thereunder in order to impose the withdrawal charge.

Applicants request exemptions from Section 26(a) and 27(c)(2) of the Act in order that the assets of Account E may be held by AGNY under the terms and conditions, and subject to the charges and fees, as set forth in the application, rather than by a trustee or custodian.

Section 6(c)

Section 6(c) of the Act generally authorizes the Commission to exempt any person, security or transaction from the provisions of the Act and rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly

intended by the policy and provisions of the Act. Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

Approval Requested

Pursuant to Section 11 of the Act, Applicants request approval of the terms of the proposed transfers among divisions one through three and six through eight of Account E under the Current Contracts and among divisions six through eight of Account E under the Proposed Contracts.

Notice is further given that any interested party may, not later than October 12, 1982 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following October 12, 1982 unless the Commission thereafter orders a hearing upon request or upon the Commission's motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing, if ordered, and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–26335 Filed 9–23–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 12670; 811–1276]

Industries Trend Fund, Inc.; Filing of an Application

September 16, 1982.

Notice is hereby given that Industries Trend Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an openend, diversified, management investment company, filed an application on August 10, 1982, and an amendment thereto on September 2, 1982, for an order pursuant to Section 8(f) of the Act, declaring that it has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was organized as a Texas corporation. On July 20, 1964, Applicant registered under the Act and filed a registration statement pursuant to the Securities Act of 1933 with respect to 5,000,000 shares of its common stock. That registration was declared effective on February 5, 1965, whereupon Applicant commenced the initial offering of its shares.

On January 31, 1982, Applicant's board of directors voted unanimously to approve a Plan and Agreement of Reorganization ("Plan") which was further approved by the necessary affirmative vote of two-thirds of Applicant's shareholders on April 9, 1981. Pursuant to the Plan, at the close of business April 30, 1981, substantially all of Applicant's assets were transferred to Pilot Fund, Inc. ("Pilot") in exchange for shares of Pilot common stock on the basis of relative net asset value.

Applicant states that its shareholders received a final dividend from net investment income of $0.238 per share, payable May 11, 1981, to shareholders of record at the close of business on May 1, 1981. Applicant further represents that there were 4,849,873 shares of Pilot common stock issued to its shareholders on the basis of 1.399 Pilot shares for each share of Applicant.

According to the application, Applicant has taken the steps necessary to dissolve itself in accordance with the provisions of Texas law and now seeks an order of the Commission terminating its registration as an investment company under the Act.

Applicant represents that it has no assets, liabilities or securityholders, and that it is not a party to any litigation or administrative proceedings. Applicant further represents that it is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

Section 8(f) of the Act provides, inpertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than October 12, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–26331 Filed 9–23–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 12669; 812–5256]

Iowa Liquid Assets Fund, Inc.; Filing of an Application

September 16, 1892.

Notice is hereby given that Iowa Liquid Assets Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an openend, diversifed, management investment company, filed an application on July 28, 1982, and an amendment thereto on August 30, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder, to the extent necessary to permit Applicant to calculate its net asset value per share using the amortized cost method of valuation. All interested persons are

referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

According to the application, Applicant's investment objective is to seek maximum current income consistent with safety of principal and maintenance of liquidity through investments in United States Government securities and repurchase agreements secured by such securities; commercial and industrial loans issued and guaranteed by Iowa commercial banks ("Banks"); and redeemable trust certificates sponsored by federally insured student loans originated by such Banks. Applicant represents that the creditworthiness, including financial condition and loan loss record, of all Banks seeking to sell loans to Applicant will be carefully evaluated by its investment adviser prior to the execution of any agreement with such Bank, and periodically thereafter.

Applicant further represents that its board of directors will also make a determination of the creditworthiness of each participating Bank before, or at the next quarterly board meeting following, execution of any relevant agreement with such Bank, and at least annually thereafter. Moreover, to the extent that Applicant purchases floating rate or variable rate obligations or obligations with demand features, Applicant intends to determine the maturities of such obligations in accordance with the procedures set forth in proposed Rule 2a–7 under the Act, or if the rule should ultimately be adopted, in accordance with the procedures set forth in the rule as adopted.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) With respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c–1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to puchase or to sell such security. Rule 2a–4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 states further that protfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by an investment company's board of directors. Prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a–4 requires that portfolio instruments of "money market" funds be valued with reference to market factors and (2) it would be inconsistent, generally, with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments with over sixty-day maturities on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977). In view of the foregoing, Applicant requests an exemption from Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit Applicant to calculate its net asset value per share using the amortized cost method of valuation.

Section 6(c) of the Act provides, in pertinent part, that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of its request, Applicant represents that its board has determined that, absent unusual circumstances, amortized cost value represents the fair value of its portfolio securities and that the amortized cost method of valuation will benefit both the Applicant and its shareholders. Applicant states that by using the amortized cost method of valuing its shares, investors would have the convenience of being able to value their holdings simply by knowing the number of shares which they own. Applicant further maintains that by using the amortized cost method of valuation its net asset value per share would not vary as a result of realized and unrealized capital gains and loses.

Applicant consents to the imposition of the following conditions in an order granting the relief it requests:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to Applicant's shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objective, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board shall be the following:

(a) Review by the board, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the board will promptly consider what action, if any, should be initiated by it.

(c) Where the board believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: Redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio instruments of Applicant; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a

[1] To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the board in the exercise of its discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

dollar-weighted average portfolio maturity in excess of 120 days.[2]

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of its board's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which the board determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of directors.

6. Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than October 12, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–26332 Filed 9–23–82; 8:45 am]

BILLING CODE 8010–01–M

[2] In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

[Release No. 12673; 812–5031]

LFS Variable Account A, et al.; Filing of Application

September 17, 1982.

Notice is hereby given that Lomas Financial Security Insurance Company (the "Insurance Company"), LFS Variable Account A (the "Variable Account"), a separate account of the Insurance Company registered under the Investment Company Act of 1940 ("Act") as a management investment company, and, where applicable, Advance Financial Services Corporation (the "Broker-Dealer") filed an application on December 1, 1981 and amendments thereto on April 16, 1982 and September 3, 1982 for an order of the Commission, pursuant to Section 6(c) of the Act, exempting them from provisions of Sections 2(a)(32), 2(a)(35), 17(f), 22(c), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rules 17f–2 and 22c–1 thereunder to the extent necessary to permit the transactions described in the application. Additionally, the application, as amended, includes requests by the Insurance Company, the Variable Account, Advance Mortgage Corporation (the "Mortgage Company"), Advance Asset Advisers, Inc., (the "Investment Adviser") and Advance Financial Securities Corporation (collectively, "Applicants") for an order of the Commission, pursuant to Sections 17(b) and 6(c) of the Act, for an exemption from Section 17(a) of the Act and, pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder, to permit the Applicants to engage in certain transactions in the manner and subject to the conditions set forth in the application. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below.

According to the Applicants, the Mortgage Company, a Delaware corporation, owns all of the outstanding common stock of the Insurance Company and is wholly owned by the Lomas/Advance Venture, which is a joint venture organized under Texas law and controlled by the Lomas & Nettleton Financial Corporation. Optimum Mortgage Company Ltd., a Michigan limited partnership, also has a substantial interest in the Lomas/Advance Venture. The sole general partner of Optimum Mortgage Company Ltd. is Optimum Mortgage Corporation, a Delaware corporation and an affiliate of Oppenheimer and Company, a New York-based investment banker. The Broker-Dealer and the Investment Adviser are also wholly owned by the Mortgage Company.

The Proposed Transactions With Affiliates

Applicants request an exemption from Sections 17(a) and 17(d) of the Act and Rule 17d–1 thereunder to permit the Variable Account to purchase Conventional Mortgage Pass-Through Certificates ("Conventional Certificates"), Federal National Mortgage Association ("FNMA") Guaranteed Mortgage Pass-Through Certificates ("FNMA Certificates"), and Government National Mortgage Association Modified Pass-Through Mortgage-Backed Securities ("GNMA Securities") from the Mortgage Company (collectively, "Mortgage Securities").

According to Applicants, the Variable Account intends to purchase Mortgage Securities from the Mortgage Company for investment purposes. The Variable Account will have no participation in the offering of the Mortgage Securities as an issuer, underwriter, dealer, or manager and will not share in any profits or losses of such offering. The Broker-Dealer will act as placement agent for each purchase of a Mortgage Security from the Mortgage Company by the Variable Account but will receive no compensation, commission or broker's fee for performing this function. The Mortgage Company will be acting as a principal and not as an agent or broker in connection with the sale of Conventional Certificates and GNMA Securities. Although FNMA will be the issuer of FNMA Certificates, it will issue them either to or to the order of the Mortgage Company, and therefore the Mortgage Company also will be acting

as a principal and not as an agent or broker in connection with sales of FNMA Certificates to the Variable Account.

The Insurance Company, the Variable Account, and the Investment Adviser believe that the purchasing of Mortgage Securities from the Mortgage Company is desirable because they believe that the most effective way for the Variable Account to invest in conventional mortgage loans is to purchase Conventional Certificates or FNMA Certificates. According to Applicants, precluding the Variable Account from purchasing Conventional Certificates from the Mortgage Company would significantly limit the investment opportunities of the Variable Account in this market. Applicants also assert that precluding the Variable Account from purchasing FNMA Certificates from the Mortgage Company probably would significantly limit the investment opportunities of the Variable Account in this market because FNMA Certificates are marketed by the seller of the underlying conventional mortgage loans and the Mortgage Banker is one of the largest mortgage bankers in the country. Finally, Applicants contend that it would be advantageous to the Variable Account to purchase GNMA Securities directly from the Mortgage Company because, *inter alia*, the investment in GNMA Securities is extremely safe and the price at which the Mortgage Company will sell the securities to the Variable Account will be better than the price then available on the open market. Therefore, Applicants request an exemption from the prohibitions of Section 17(a), subject to the conditions listed below, to the extent necessary or appropriate to authorize the Variable Account to purchase Mortgage Securities from the Mortgage Company as summarized above and described in the application. Similarly, Applicants request an exemption from the prohibitions of Section 17(d), as implemented in Rule 17d–1, subject to the conditions listed below, to the extent necessary or appropriate to authorize the Mortgage Company to engage in the transactions with the Variable Account as summarized above and described in the application.

In making the foregoing request, Applicants have agreed to the following conditions:

1. A majority of the Board of Managers of the Variable Account will not be "interested persons" of the Applicants as defined in the Act.

2. Before any transaction will be executed with the Mortgage Company for the purchase of a Conventional Certificate, FNMA Certificate, or GNMA Security, the Variable Account or the Investment Adviser will obtain such information as they deem necessary to determine the most favorable terms available with respect to the proposed instrument. To this end, for each contemplated transaction the Investment Adviser will formulate a proposal containing the terms of the proposed instrument. The Variable Account or the Investment Adviser must obtain at least three competitive offers from at least three independent sources for each proposal. Such sources must be those who, in the experience of the Variable Account or the Investment Adviser, are in a position to quote favorable terms with respect to the proposed instrument.

3. The Variable Account will not enter into any agreement with the Mortgage Company with respect to a proposed Conventional Certificate, FNMA Certificate, or GNMA Security unless a determination is made in each instance, based upon information available to the Variable Account and the Investment Adviser, that the price available from the Mortgage Company is "better than" that available from the independent sources. To be considered "better than" that available from other sources, the yield quoted by the Mortgage Company must be at least one basis point better than the best of the bona fide offers obtained from the independent sources.

4. The Variable Account will not enter into any agreement with the Mortgage Company with respect to a proposed Conventional Certificate unless the Mortgage Company agrees that the mortgage loans backing up the proposed Conventional Certificate will be assigned to an independent bank trustee for the benefit of the Account and the pooling and servicing agreement between the Mortgage Company and the trustee will give the trustee the authority to terminate all the rights and obligations of the Mortgage Company under the pooling and servicing agreement upon the occurrence of an event of default by the Mortgage Company and, in furtherance of that authority, provides for the receipt by the trustee of the standard and customary reports and certifications. If a bank letter of credit is used in place of mortgage guaranty insurance for any Conventional Certificate, then for purposes of this condition, a bank trustee shall not be considered "independent" with respect to that Certificate if that bank or any affiliate thereof issued the letter of credit.

5. Before the Variable Account enters into any contract, transaction, or agreement with the Mortgage Company relating to Conventional Certificates or FNMA Certificates, the contract, transaction, or agreement (including, with respect to Conventional Certificates, the terms of the pooling and servicing agreement between the Mortgage Company and the trustee for the benefit of the Variable Account) will be reviewed and approved by a majority of the Variable Account's Board of Managers, including a majority of the disinterested members of the Board, after a thorough examination of all relevant facts. The relevant facts include the proposal formulated by the Investment Adviser and the quotations received from independent sources in response thereto. The Board of Managers shall determine in the course of their review and approval that:

(a) Such contracts, transactions or agreements are in the best interest of the Variable Account and the Contract owners;

(b) The nature and quality of the services that the Mortgage Company will provide pursuant to its agreements with the independent trustee will be at least equal to those provided by others offering the same or similar services; and

(c) The fees received by the Mortgage Company for such services are fair and reasonable in light of the usual and customary charges made by others for services of the same nature and quality.

6. All transactions between the Variable Account and the Mortgage Company will originate with the Variable Account or the Investment Adviser. The Mortgage Company will make no solicitations of the Variable Account. In communications with the Variable Account with respect to the proposed transactions, the Mortgage Company personnel will confine their activities to the response to inquiries made of them by the Variable Account or the Investment Adviser.

7. The Variable Account intends to purchase Conventional Certificates, FNMA Certificates, and GNMA Securities for investment purposes. The Variable Account will have no participation in the offering of these securities as an issuer, underwriter, dealer, or manager and the Variable Account will not share in any profits or losses of such offering.

8. No Mortgage Pass-Through Certificate shall be sold by the Mortgage Company to, or purchased by, the Variable Account if an underlying mortgage in the mortgage pool results from the sale of real estate owned by an affiliated person of the Applicants herein, or if the mortgagor is an affiliated person of the Applicants.

9. Applicants will make every reasonable effort to obtain a rating from a major rating service for each Conventional Certificate purchased from the Mortgage Company.

10. The Variable Account and the Investment Adviser will maintain records with respect to all transactions with the Mortgage Company, including documentation of having obtained quotations from at least three other sources with respect to each transaction in Conventional Certificates, FNMA Certificates, and GNMA Securities, and documentation of having attempted to obtain a rating from a major rating service for each Conventional Certificate purchased from the Mortgage Company and the results thereof. A schedule of all transactions with the Mortgage Company, including the ratings, if any, on Conventional Certificates held by the Variable Account, will be filed with the periodic reports filed by the Variable Account with the Commission pursuant to Sections 30(a) and 30(b)(1) of the Investment Company Act of 1940.

11. All transactions referred to herein shall be carried out in accordance with the representations made in this Application for an exemption order.

12. The Board of Managers of the Variable Account will periodically monitor the activities of the Variable Account and the Investment Adviser to ensure that the conditions stated in this Application are being adhered to in all respects.

Charges and Deductions Under the Contracts

Applicants state that the following charges will be assessed either against contract owners or the Variable Account: (i) A Contract Maintenance Charge of, initially, $25.00 per calendar year per contract; (ii) an Expense Reimbursement Charge which is guaranteed to be no more than $10.00 per year per contract; (iii) a daily mortality and expense risk premium at an effective annual rate of 1.00% of the value of the assets of the variable account; (iv) a daily charge for investment advisory services at an effective annual rate of 0.30% of the value of the assets of the Variable Account; (v) a deduction for premium taxes; and (vi) a contingent deferred sales load.

The Contract Maintenance Charge will be deducted to offset the expected costs of administrative services purchased from a third party pursuant to an administrative services contract. Prior to the annuity date, the Contract Maintenance Charge will be deducted from the contract value on December 31 of each calendar year for the subsequent year. Such a charge also will be deducted from the initial purchase payment in determining the net purchase payment allocated to the Variable Account. The amount will be prorated for the first contract year from the date of issue of a contract to the end of the calendar year so that it will be assessed only for the number of days remaining in the calendar year. After the annuity date, the charge will be prorated and deducted monthly from the amount of each annuity payment, except that the charge shall not be deducted from annuity payments made between the annuity date and December 31 of the year in which annuity payments commence.

The Expense Reimbursement Charge also will be deducted from contracts on December 31 of each year. Each contract which has been in effect on that date for at least 60 days will be charged a pro rata portion of the Insurance Company's accumulated expenses for performing services through such date which are not covered by the Contract Maintenance Charge. The maximum amount of the Expense Reimbursement Charge for any year will be $10.00 per contract. To the extent any actual expenses are not reimbursed during any year or years as a result of the $10.00 limitation, these expenses will be carried over to the next year or years. Applicants represent that the Contract Maintenance Charge and Expense Reimbursement Charge are not designed to exceed the actual expenses incurred in administering the contracts or to subsidize the costs of administering other contracts issued by the Insurance Company.

Of the mortality and expense risk premium 0.80% of the charge is allocable to mortality risks and 0.20% to expense risks. Applicants represent that the mortality and expense risk premium under the contracts is consistent with the protection of investors because it is a reasonable and proper insurance charge. The amount of the charge is consistent with industry practice for policies (as reflected in public filings made with the Commission and with various state insurance departments).

The contingent deferred sales charge ("sales charge"), when imposed, will be 5% of the amount withdrawn (which amount includes the amount withdrawn for the sales charge). However, the first time in any contract year that contractowners make a withdrawal, they may withdraw up to 10% of all purchase payments made more than one year prior to the date of withdrawal without incurring the sales charge. Also, amounts withdrawn that are deemed to come from purchase payments made more than five years prior to the date of withdrawal may be withdrawn free of a sales charge. To determine whether an amount withdrawn is attributable to a purchase payment made more than five years prior to the date of withdrawal, all withdrawals will be handled on a first-in, first-out basis. Accordingly, all amounts withdrawn other than such part of the first withdrawal in any contract year that does not exceed 10% of all purchase payments made more than one year prior to the date of withdrawal will be deemed to come from puchase payments in the chronological order of receipt of these purchase payments. Additionally, amounts withdrawn that are deemed to come from earnings may be withdrawn free of a sales charge (amounts withdrawn in excess of the total amount of purchase payments made under the contract as of the date of withdrawal will be deemed to come from earnings). Finally, there will be no sales charge on distributions made pursuant to the death of the annuitant.

Applicants request an exemption from the provisions of Sections 2(a)(32), 2(a)(35), 22(c), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rule 22c–1 thereunder to the extent necessary or appropriate to permit the offer of the contracts with the described sales load arrangement. Applicants also request an exemption from Section 27(c)(2) of the Act to permit the imposition of the Contract Maintenance Charge, the Expense Reimbursement Charge, the deduction for premium taxes, the mortality and expense risk premium, and the investment advisory fee.

Custodial Requirements

It is anticipated that the securities and similar investments of the Variable Account will be deposited with the National Bank of Detroit or other qualified bank pursuant to a safekeeping agreement. Applicants request an exemption from Section 17 and Rule 17f–2 to permit access to the securities and similar investments of the Variable Account to (1) authorized representatives of the Arizona Director of Insurance, and (2) officers or responsible employees of the Insurance Company authorized by resolutions of both the Board of Directors of the Insurance Company and the Board of Managers of the Variable Account. Applicants also request that the Commission grant an order of exemption from Section 27(c)(2) of the Act to the extent necessary to permit the Insurance Company to act as custodian and hold the assets, although not as trustee, under

the safekeeping arrangements described in the application. Furthermore, Applicants respectfully request an exemption from Section 27(c)(2) to the extent necessary to allow the Insurance Company to hold securities and similar investments in book entry form, as permitted by Section 17(f) and Rule 17f–4.

Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from Section 17(a) of the Act if evidence established that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act; and (3) the proposed transaction is consistent with the general purposes of the Act.

Rule 17d–1, promulgated under Section 17(d) of the Act, authorizes the Commission to exempt a joint enterprise, joint arrangement or profit-sharing plan involving a registered investment company from Rule 17d–1 after considering whether the participation of the registered investment company in the joint enterprise, joint arrangement or profit-sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

Section 6(c) of the Act generally authorizes the Commission to exempt any person, security or transaction from the provisions of the Act and rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested party may, not later than October 12, 1982 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following October 12, 1982 unless the Commission thereafter orders a hearing upon request or upon the Commission's motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing, if ordered, and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–26337 Filed 9–23–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 12667; 812–4031]

Merrill Lynch Pacific Fund, Inc.; Filing of an Application

September 16, 1982.

Notice is hereby given that Merrill Lynch Pacific Fund, Inc. ("Applicant"), an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on December 11, 1980, and amendments thereto on June 9, 1981, and February 11, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 17(f) of the Act to permit Applicant's custodian, State Street Bank & Trust Company ("State Street"), to enter into a sub-custodian agreement with The National Bank of Australasia, Ltd. ("Bank") pursuant to which Australian corporate securities owned by Applicant will be deposited in the custody of the Bank. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that prior to July 11, 1980, it invested exclusively in Japanese securities and until that date Applicant was known as The Nomura Capital Fund of Japan, Inc. On July 11, 1980, the management of Applicant was transferred from Normura Capital Management, Inc. to Merrill Lynch-Nomura Management Company, Inc. and Applicant's present name assumed. Applicant represents that its investment objectives now is to seek long-term capital appreciation through investment in equities of corporations domiciled in Far Eastern or Western Pacific countries, including Japan, Australia, Hong Kong, Singapore and the Philippines.

According to the application, a substantial majority of Applicant's investments, other than Japanese securities, are those of corporations domiciled in Australia. Applicant states, however, that frequently there may be no organized trading market for Australian corporate securities outside Australia, requiring Applicant to effect trading in these securities in Australia. Even where Australian securities are traded abroad, such as in London, Applicant states that they are generally available only at significant premiums over the prices prevailing on Australian exchanges. In addition, Applicant represents that the Articles of Association of some Australian corporations contain provisions which have the effect of requiring foreign owners of their shares to hold the certificates evidencing such shares in Australia in the name of a nominee with an address in Australia.

The application states that the Bank is the third largest non-government bank in Australia in terms of profits, and the third largest in terms of deposits, with total stockholders funds of $A591,064,000 at September 30, 1981, the latest date for which figures are available. The application further states that the Bank is chartered under the laws of Victoria and its operations are subject to supervision of the Reserve Bank of Australia under the Banking Act of Australia. The bank has 902 offices throughout Australia and an additional 17 offices overseas, including offices located in New York, London, Singapore and Hong Kong.

Applicant proposes to join with State Street and the Bank in the execution and delivery of a sub-custody agreement pursuant to which the Bank, through a wholly-owned and fully guaranteed subsidiary, will act as a sub-custodian of the Applicant's securities in Australia and, in that capacity, receive and hold the monies of the Applicant and the Australian securities purchased by the Applicant. Applicant represents that the Bank will be acting solely as the agent of State Street, will be subject only to the instructions of State Street and will not deal directly with Applicant. The proposed sub-custody agreement will provide, among other things, that it will be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts and that the securities held by the Bank shall not be subject to any right, charge,

security interest, lien or claims of any kind in favor of the Bank except for their safe custody or administration, and the beneficial ownership of such securities shall be freely transferable without the payment of money or value other than for safe custody or administration. The sub-custody agreement will further provide that the Bank shall grant access to such accountants, attorneys and agents designated by State Street for the purpose of making such direct physical examination as State Street shall from time to time deem necessary to verify the accuracy of the books and records of the Bank, relating to the money and securities received, held and disbursed for the account of State Street. The Applicant has arranged with Price Waterhouse, its independent public accountants, to have their Australian affiliate make such examinations, including at least one regularly scheduled audit and one surprise audit for each of the Applicant's fiscal years.

Section 17(f) of the Act, in relevant part, provides that every registered management investment company shall maintain its securities and similar investments in the custody of a bank having the qualifications prescribed in paragraph (1) of Section 26(a) of the Act. A bank generally is defined in Section 2(a)(5) of the Act as a bank organized or doing business under the laws of any State or the United States which is supervised or examined by State or Federal authority having supervision over banks. It is the Applicant's understanding that Section 17(f) permits the placement and retention of securities of a registered management investment company in a foreign branch of a domestic bank falling within the definition contained in Section 2(a)(5) of the Act and meeting the requirements of paragraph (1) of Section 26(a), provided that the arrangements therefor are consistent with the arrangements of a domestic custodian bank. Applicant represents that there is, however, no such foreign branch of a domestic bank in Australia. Therefore, it is claimed that unless the Applicant is able to obtain an order exempting it from the requirements of Section 17(f) of the Act, investment in certain Australian corporations will be impeded due to the logistical and safety problems associated with transporting the securities, and in other Australian corporations investment will be precluded entirely due to the requirement that stock certificates of such corporations be held in Australia.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision under the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant submits that the exemptive relief requested would be consistent with the protection of investors and the policy and provisions of the Act because the subcustody arrangements provide for the same degree of contractual responsibility as would exist if the Applicant's securities were continuously retained in the direct custody of a bank qualifying as a custodian under the Act. State Street has agreed that, irrespective of the fact that the Bank will have actual physical possession of the securities which are held pursuant to the sub-custody agreement, State Street will be held to the same standard of care with respect to the safekeeping of such securities as would be applicable if State Street were itself holding such securities in Massachusetts. State Street intends that in the performance of its duties under the sub-custody agreement it shall exercise reasonable care. Applicant further represents that State Street will indemnify and hold the Applicant harmless from and against any loss which shall occur as the result of the failure of the Bank to exercise reasonably care with respect to the safekeeping of securities to the same extent that State Street would be required to indemnify and hold the Applicant harmless if State Street itself were holding such securities in Massachusetts. State Street has further warranted to the Applicant that the established procedures to be followed by the Bank, in State Street's opinion, afford protection for the Applicant's securities at least equal to that afforded by State Street's established procedures with respect to similar securities held by State Street in Massachusetts.

The application states that State Street has advised the Applicant that the Bankers Blanket Bond which it maintains provides standard non-negligent loss coverage with respect to securities which may be held in State Street's offices or in offices of any of its affiliates or subsidiaries and securities which may be held in the office of non-affiliated foreign banks and foreign securities depositories. It is further stated that State Street intends to maintain such coverage so long as it is available at reasonable cost, and shall inform the Applicant if at any time State Street shall for any reason discontinue such coverage. The application also states that State Street has advised the Applicant that it does not intend to obtain any insurance for the Applicant's benefit which protects against the imposition of exchange control restrictions or confiscation, expropriation or nationalization of any securities or the assets of the issuer of such securiteis by a government of any foreign country in which the issuer of such securities is organized or in which such securities are held for safekeeping. finally, it is stated that State Street has advised the Applicant that insurance coverage in respect of confiscation, expropriation or nationalization of securities may be available to the Applicant at its own expense.

Notice is further given that any interested person may, not later than October 12, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereof. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-26334 Filed 9-23-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12668, 811-2856]

Morgan Capital Corp.; Filing of an Application

September 16, 1982.

Notice is hereby given that Morgan Capital Corp. ("Applicant"), 23 Wall Street, New York, NY 10015, registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified, management investment company, filed an application on July 27, 1982, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states, among other things, that Applicant, a Maryland corporation and a wholly-owned subsidiary of Morgan Holdings Corp., registered under the Act on July 31, 1978; that it has not filed a registration statement under the Securities Act of 1933, and that it has not made a public offering of its securities.

Applicant's board of directors, by unanimous consent on May 14, 1982, authorized the distribution of all of Applicant's capital surplus and retained earnings, other than $100 representing 100 shares of common stock. Applicant states that it has disposed of its entire investment portfolio and that it has ceased all trading operations; that it paid dividends to its sole securityholder totalling $18,860,000 in 1981, and a final dividend of $174,991 on July 16, 1982. Applicant has no active full time employees. According to the application, Applicant has no unpaid debts or other liabilities, has not created a separate trust to hold any of its assets, and it is not engaged or involved in any litigation or administrative proceedings.

The application states that Applicant has one securityholder, and although it has no present plans to engage in any specific business activity, it may in the future engage in business activities provided that such activities will not require it to register under the Act.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order and, upon taking effect of that order, the registration of such company under the Act shall cease to be in effect.

Notice is further given that any interested person may, not later than October 12, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing theron. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-26333 Filed 9-23-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19054; SR-NASD-81-19]

National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

September 16, 1982.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, N.W., Washington, D.C. 20006, filed a proposed rule change on August 7, 1981, and an amendment thereto on July 19, 1982, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to adopt Appendix F to Article III, Section 34 of the NASD's Rules of Fair Practice. Appendix F prescribes standards for members of the NASD, or persons associated with a member, who participate in the public offering of a direct participation program ("DPP"). The standards include requirements regarding investor suitability to purchase a DPP; disclosure of material facts concerning a DPP; and the reasonableness of organization and offering expenses, compensation paid in connection with an offering, and sales incentive items provided to a member or associated person.

Notice of the original proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 18038, August 14, 1981) and by publication in the **Federal Register** (46 FR 42392, August 20, 1981). The amendment was noticed in Securities Exchange Act Release No. 18916, July 26, 1982, and in the **Federal Register** (47 FR 33347, August 2, 1982). All written statements filed with the Commission and all written communications between the Commission and any person relating to the proposed rule change were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission received only three comment letters in response to the original filing of the proposed rule change. Although these comment letters raised a variety of issues regarding the proposed rule change, the amendments to the rule change responded to the majority of issues discussed by the commentators. The NASD, however, did not adopt two suggestions by the commentators. First, one commentator, although generally supportive of Appendix F, believed that so-called "back-end" charges[1] should be permitted as underwriting compensation. In addition, the same commentator believed that an underwriter's due diligence expenses should not be included in calculating the amount of an underwriter's compensation. Although these suggestions were not adopted by the NASD in its amended rule change filing, no comments were received on the proposed amendments to the rule change.

The NASD has prohibited "back-end" compensation due to the difficulty of determining whether the amount of such compensation in an offering is reasonable. Because the amount of revenue produced by a DPP is unknown at the time of a public offering, the exact amount of compensation an underwriter

[1] Such charges permit an underwriter to receive compensation from the revenue produced by a DPP instead of, or in addition to, a fixed percentage of the cash receipts associated with the offering. Examples of "back-end" charges include a working interest, net profits interest, or overriding royalty interest.

would receive from "back-end" charges is not readily determinable. For this reason the NASD has, in the past, permitted only a percentage of the cash receipts of an offering as underwriting compensation. Therefore, in light of the difficulty in determining whether "back-end" compensation is reasonable, the Commission does not believe that it is inconsistent with the Act for the NASD to adopt a flat prohibition of such compensation at this time. In this regard, the Commission would note that the NASD currently is considering the issue of whether to allow "back-end" charges as part of an underwriter's compensation. *See* NASD Notice to Members 82–14, March 9, 1982.

With respect to the comment concerning due diligence expenses, Appendix F already addresses the commentator's concern. Specifically, because the NASD only treats those due diligence expenses reimbursed by the sponsor as compensation, the Commission does not believe that such a characterization will act as a significant disincentive to underwriters fulfilling their due diligence responsibilities under the federal securities laws.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, in particular, the requirements of Section 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the division of Market Regulation, pursuant to delegated authority.[2]

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–26336 Filed 9–23–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 12674; 812–5230]

SMA Life Assurance Co. and SMA Equities, Inc; Filing of Application

September 17, 1982.

Notice is hereby given that SMA Life Assurance Company ("Company"), a stock life insurance company organized under the laws of Delaware, Separate Accounts VA–A, VA–B, and VA–C of the Company ("Separate Accounts"), separate accounts registered under the Investment Company Act of 1940 ("Act") as management investment companies, and SMA Equities, Inc. (collectively "Applicants"), 440 Lincoln Street, Worcester, Massachusetts, filed an application on July 1, 1982 and an amendment thereto on September 3, 1982 for an order of the Commission pursuant to Section 6(c) of the Act exempting Applicants from provisions of Sections 2(a)(32), 2(a)(35), 22(c), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rule 22c–1 thereunder to the extent necessary to permit the transactions described in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants filed an application on September 13, 1979 and an amendment thereto on December 28, 1979 for an order pursuant to Section 6(c) of the Investment Company Act of 1940 granting exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 27(c)(1), and 27(d) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit Applicants to offer the combination fixed and variable annuity policies described in the application with a contingent deferred sales charge instead of a front-end sales load. The Application was noticed on January 18, 1980 in Investment Company Act Release No. 11025, and the requested exemptions were granted by order of the Commission on February 12, 1980 in Investment Company Act Release No. 11045 ("prior order"). Applicants now request an amendment to the order, to the extent necessary to implement certain changes in the contingent deferred sales charge applicable to the policies. Pursuant to the prior order, a contingent deferred sales charge is applied in the case of partial redemptions or surrenders of the policies or annuitization under a period certain option within 14 full policy years under an elective payment policy or 9 full policy years under a single payment policy (the "Surrrender Charge Periods"). The charge on single payment policies, as a percentage of accumulated value surrendered, redeemed, or annuitized under a period certain option, is 5% in policy Years 1–5, and thereafter grades down 1% annually to zero after Year 9. The charge on elective payment policies is currently 7% in Years 1–8 and thereafter grades down by 1% annually to zero after Year 14. On and after the 10th policy year of a single payment policy and the 15th year of an elective payment policy no charge is assessed on partial redemption, surrender or annuitization of the policies. In all cases, the contingent deferred sales charge is retained by the Company to reimburse it for the expenses incurred in connection with the sales of the policies. These expenses include commissions, promotional costs, sales administration, and other sales related expenses.

Applicants propose to reduce the number of years a single payment policy would be subject to the contingent deferred sales charge, as follows: (policy years/charge as percent of amount surrendered, redeemed or annuitized) 1–3/5%; 4/4%; 5/3%; 6/2%; 7/1%; and 8 and thereafter/0%. Applicants propose to reduce the number of years an elective payment policy would be subject to the contingent deferred sales charge, as follows: (policy years/charge as percent of amount surrendered, redeemed or annuitized) 1–3/7%; 4/6%; 5/5%; 6/4%; 7/3%; 8/2%; 9/1%; and 10 and thereafter/0%.

Applicants also propose that, under both elective and single payment policies, the policyholder may, after the first policy year, at any time withdraw without a contingent deferred sales charge 10% of the accumulated value of the policy, less the amount of any previous free redemptions in the same policy year. This right shall be noncumulative from policy year to policy year. If the policyholder requests more than one partial withdrawal during the policy year, on the second and subsequent withdrawals the policyholder may withdraw free of charge the difference between 10% of the then accumulated value of the policy and the total of any prior redemptions in the same policy year to which no charge was applied. Each partial redemption must be in a minimum amount of $500 under a single payment policy, or $200 under an elective payment policy. In the event that a withdrawal is made in excess of the amount which may be withdrawn free of charge, only the excess will be subject to a surrender charge. In no event will the total contingent deferred sales charges on any one policy exceed 8% of the gross purchase payments under an elective payment policy or 6.5% of the gross purchase payment under a single payment policy.

Applicants have requested amendment of the prior order exempting them from the provisions of Sections 2(a)(32), 2(a)(35), 22(c), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rule 22c–1 thereunder to the extent necessary to permit the proposed changes.

Section 6(c) of the Act generally authorizes the Commission to exempt any person, security or transaction from the provisions of the Act and rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and

[2] 17 CFR 200.30–3(a)(12).

consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested party may, not later than October 12, 1982 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following October 12, 1982 unless the Commission thereafter orders a hearing upon request or upon the Commission's motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing, if ordered, and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–26338 Filed 9–23–82; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region III—Advisory Council; Public Meeting

The Small Business Administration Region III Advisory Council, located in the geographical area of Richmond, Virginia, will hold a public meeting at 1:00 p.m., Thursday, October 21, 1982 through Noon, on Friday, October 22, 1982 at the Holiday Inn (39th Street), Virginia Beach, Virginia by members and the staff of the Small Business Administration or others attending.

For further information, write or call M. Hawley Smith, District Director, U.S. Small Business Administration, P.O. Box 10126, Richmond, Virginia 23240; (804) 771–2741.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

September 21, 1982.

[FR Doc. 82–26361 Filed 9–23–82; 8:45 am]

BILLING CODE 8025–01–M

Region V—Advisory Council; Public Meeting

The Small Business Administration, Region V Advisory Council, located in the geographical area of Minneapolis/St. Paul, will hold a public meeting at 2:30 p.m., Thursday, October 21, 1982, in the SBA Classroom, 610–C Butler Square, 100 North Sixth Street, Minneapolis, MN, to discuss such business as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mel Aanerud, Acting District Director, U.S. Small Business Administration, 610–C Butler Square, 100 North Sixth Street, Minneapolis, MN 55403; 612/349–3559.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

September 21, 1982.

[FR Doc. 82–26359 Filed 9–23–82; 8:45 am]

BILLING CODE 8025–01–M

Region VII—Advisory Council; Public Meeting

The Small Business Administration, Region VII St. Louis Advisory Council, located in the geographical area of St. Louis and Eastern Missouri, will hold a public meeting at 10:30 a.m., Wednesday, October 27, 1982, at Schneithorst's Hofamberg Inn, Lindbergh at Clayton, St. Louis, Missouri, to discuss such business as may be presented by members, staff of the U.S. Small business Administration, or others present.

For further information, write or call Robert L. Andrews, District Director, U.S. Small Business Administration, 815 Olive Street, Room 242, St. Louis, Missouri, 63101; 314/425–6600.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

September 21, 1982.

[FR Doc. 82–26360 Filed 9–23–82; 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 Casper, will hold a public meeting to include the Wyoming Small Business Administration Advisory Council members in room 240 of the Commerce and Industry Building, University of Wyoming campus, Ivinson at 15th Street, Laramie, Wyoming, on Saturday, October 9th, commencing at 9:00 a.m. to discuss such business as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Paul W. Nemetz, District Director, U.S. Small Business Administration, 100 East B Street P.O. Box 2839, Casper, Wyoming 82601; 307/328–5761.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

September 21, 1982.

[FR Doc. 82–26362 Filed 9–23–82; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

National Productivity Advisory Committee; Meeting

September 17, 1982.

The National Productivity Advisory Committee will hold its third meeting on Friday, October 1, 1982 at 10:00 a.m. at the Main Treasury Building, at 15th Street and Pennsylvania Avenue, NW, Washington, D.C.

The four subcommittees will meet during the morning beginning at 10:00 a.m. as follows:

Capital Investment—Room 3120
Human Resources—Room 3424
Role of Government in the Economy—Room 4426
Research, Development and Technological Innovation—Room 4125

The full committee will begin its session at 1:30 pm in Room 4121/25 of the Main Treasury. It will adjourn at 3:30 p.m.

The meeting will be open to public observation. Written comments or statements may be submitted at any time before or after the meeting. Approximately 25 seats will be available on a first come, first served basis.

Roger B. Porter,

Executive Secretary, National Productivity Advisory Committee.

[FR Doc. 82–26298 Filed 9–23–82; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 186
Friday, September 24, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (eastern time), Tuesday, September 28, 1982.

PLACE: Commission Conference Room No. 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street N.W., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Ratification of Notation Vote/s.
2. Freedom of Information Act Appeal No. 82-8-FOIA-31-CL, concerning a request for records in a closed charge file compiled under the ADEA.
3. Proposed Contracts for Expert Witness Services.
4. Proposed amendment to existing contract.
5. Ninety-day Notice: Commissioner Initiated Charge Procedures.
6. Procedural Regulations for the Administration and Enforcement of the Age Discrimination in Employment Act of 1967, as amended.
7. A Report on Commission Operations by the Acting Executive Director.

CLOSED:

1. Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides recorded announcements a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Officer, Executive Secretariat at (202) 634-6748.

This Notice Issued September 21, 1982.

[S-1370-82 Filed 9-22-82; 2:43 pm]

BILLING CODE 6570-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:03 p.m. on Tuesday, September 21, 1982, the Board of Directors of the Federal Deposit Insurance Corporation met in open session, by telephone conference call, to consider a recommendation regarding the consolidation of certain liquidation offices (Case No. 45,412-L).

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public and that no earlier notice of the meeting was practicable.

Dated: September 21, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1368-82 Filed 9-22-82; 1:11 pm]

BILLING CODE 6714-01-M

3

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 10 a.m., Wednesday, September 29, 1982.

PLACE: Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposals with respect to contemporaneous reserve requirements. (Proposed earlier for public comment; Docket No. R-0371)
2. Proposed amendment to Regulation Z (Truth in Lending) regarding the treatment of seller's points. (Proposed earlier for public comment; Docket No. R-0413)
3. Proposed amendments to Regulation E (Electronic Fund Transfers) to exempt certain small institutions, relax requirements for foreign-initiated and interchange-system transfers, and eliminate duplicate periodic statements for certain intra-institutional transfers. (Proposed earlier for public comment; Docket No. R-0388)
4. Consideration of proposed Statement of Policy on Banking Market Extension Mergers and Acquisitions. (Proposed earlier for public comment; Docket No. R-0386)
5. Proposal to implement automated records management system in the Office of the Secretary.
6. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: September 22, 1982.

James McAfee,

Associate Secretary of the Board.

[S-1367-82 Filed 9-22-82; 10:32 am]

BILLING CODE 6210-01-M

4

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: Approximately 12:30 p.m., Wednesday, September 29, 1982, following a recess at the conclusion of the open meeting.

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: September 22, 1982.

James McAfee,

Associate Secretary of the Board.

[S-1371-82 Filed 9-22-82; 3:17 pm]

BILLING CODE 6210-01-M

5

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: 10 a.m., Thursday, October 7, 1982.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigation 337–TA–122 (Certain Miniature, Battery-Operated, All-Terrain, Wheeled Vehicles)—briefing and vote.
6. Consideration of the FY 84 budget.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S–1372–82 Filed 9–22–82; 4:01 pm]

BILLING CODE 7020–02–M

federal register

Friday
September 24, 1982

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Alabama: AL82–1020	Apr. 2, 1982.
Georgia:	
GA81–1308	Oct. 30, 1981.
GA82–1033	July 2, 1982.
Iowa: IA82–4030	June 18, 1982.
Oklahoma: OK81–4067	Aug. 21,1981.
OK82–4035	June 25, 1982.
Louisiana:	
LA82–4020	May 7, 1982.
LA82–4022	May 7, 1982.
LA82–4023	May 7, 1982.
Maryland: MD81–3012	Feb. 6, 1981.
New York:	
NY81–3024	Apr. 3, 1981.
NY81–3045	July 17, 1981.
Texas:	
TX82–4001	Jan. 29, 1982.
TX82–4019	May 7, 1982.
TX82–4024	June 18, 1982.
TX82–4029	June 18, 1982.
TX82–4033	June 18, 1982.
Wyoming: WY82–5106	Mar. 12, 1982.
California:	
CA82–5118	Aug. 20,1982.
CA82–5112	July 16,1982.
CA82–5122	Sept. 3,1982.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Alabama: AL82–1040 (AL82–1049)	Sept. 10, 1982.
Georgia: GA82–1006 (GA82–1051)	Feb. 19, 1982.
Ohio: OH80–2011 (OH82–2040)	Mar. 21, 1980.
South Carolina: SC80–1047 (SC82–1050)	Jan. 25, 1980.
Texas: TX81–4009 (TX82–4045)	Jan. 6, 1981.

Cancellation of General Wage Determination Decision

This is to advise all interested parties that the Department of Labor intends to withdraw 14 days from the date of this notice the following general wage determination:

NJ79-3033—Gloucester County, New Jersey, dated October 12, 1979 in 44 FR 59060—Residential Construction

Please note that we are changing the format for Federal Register wage decisions to coincide with the provisions of All Agency Memorandum No. 132 dated January 29, 1980, which provides that the Department of Labor will discontinue identifying fringe benefits separately. Rather, they will be stated as a composite figure which is the total hourly equivalent value of fringe benefits found to be prevailing. Fringe benefits which can not be stated in monetary terms will be shown in footnotes. This procedure is being phased in gradually.

Signed at Washington, D.C., this 17th day of September 1982.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

MODIFICATION PAGE 1

DECISION NO. AL82-1020 - MOD. #3 (47 FR 14341 dated April 2, 1982)	Basic Hourly Rates	Fringe Benefits
MADISON COUNTY, ALABAMA		
BUILDING CONSTRUCTION		
CHANGE:		
ASBESTOS WORKERS	$14.36	2.06
ELECTRICIANS	14.10	3%+1.90

DECISION #GA81-1308 - Mod. #1 (46 FR 53927 - October 30, 1981 DeKalb & Fulton Counties, Georgia	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Electricians	$15.00	21%

DECISION #GA82-1033 - Mod. #1 (47 FR 29148 - July 2, 1982) Clayton, DeKalb, & Fulton Counties, Georgia	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos workers	$14.60	$ 2.20
Electricians:		
Wiremen	15.00	21%
Cable splicers	15.90	21%
Plumbers & Pipefitters	14.60	2.24
Sheet metal workers	14.24	2.29

DECISION NO. IA82-4030 - MOD. #5 (47 FR 26537 - 6/18/82) Black Hawk, Cerro Gordo, Clinton, Des Moines, Dubuque, Johnson, Linn & Polk Cos., Iowa	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bricklayers & stonemasons:		
Zone 8	$13.60	2.82
Electricians - Zone 8	15.68	2.60+ 3-3/4%
Ironworkers - Zone 4	16.15	2.15
Plumbers & pipefitters:		
Zone 1	15.96	3.74

DECISION #OK81-4067-Mod.#12 46FR42613-August 21, 1981 Oklahoma, Cleveland, Caddo, Canadian, Kingfisher, Grady, Lincoln, Logan, McClain, Seminole and Pottawatomie Counties, Oklahoma	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Modification No. 1 (one) published in Federal Register dated September 10, 1982 to read "MODIFICATION NO. 11 (Eleven)"		

DECISION #OK82-4035-Mod.#1 47FR27683-June 25, 1982 Tulsa, Delaware, Creek, Craig, Ottawa, Mayes and Roger Counties, Oklahoma	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS	$16.45	1.78
SOFT FLOOR LAYERS	13.47	1.88 +B

MODIFICATION PAGE 2

DECISION NO. LA82-4020 - MOD. #7 (47 FR 19880 - 5/7/82) Statewide Louisiana	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bricklayer & stonemason:		
Zone 2	$12.36	1.48
Electricians:		
Zone 4 - Electricians	17.10	.70+ 3-2/10%
Cable splicers	17.35	"
Ironworkers - Zone 6	15.14	1.62
Painters:		
Zone 1 - Group 1	15.395	.40
Group 2	15.605	.40
Group 3	15.76	.40
Group 4	17.275	.40
Power equipment operator:		
Zone 7 - Group 1	14.48	1.95
Group 2	12.24	1.95
Group 3	12.43	1.95
Group 4	12.24	1.95
Group 5	10.69	1.95
Group 6	9.03	1.95
Group 7	14.73	1.95
Group 8	14.98	1.95
Group 9	15.23	1.95
Group 10	15.48	1.95
Group 11	15.98	1.95
Group 12	16.48	1.95

DECISION NO. LA82-4022 - MOD. #4 (47 FR 19877 - 5/7/82) Calcasieu Parish, Louisiana	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Electricians - new & old single or multiple family residence & apt. complex not to exceed 12 units 2-story walk ups	10.90	1.50 3-3/10%
Ironworkers	15.14	1.62
Painters - Group 1	15.395	.40
Group 2	15.605	.40
Group 3	15.76	.40

DECISION NO. LA82-4023 - MOD. #3 (47 FR 19878 - 5/7/82) Allen, Beauregard, Bossier, Caddo, Calcasieu, Cameron, Jefferson, Jefferson Davis, Orleans, Plaquemines, St. Bernard, St. Charles Pars., Louisiana	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Painters:		
Zones 3,4 & 5 (Allen Par. except northeast corner):		
Group 1	$15.395	.40
Group 2	15.76	.40
Allen Par. (northeast most corner north of Rt. 10):		
Group 1	10.75	
Group 2	11.60	
Group 3	12.10	
Plumber & pipefitter:		
Zone 2	13.94	3.04

DECISION NO. MD81-3012 - MOD. #1 (45 FR 11481 - February 6, 1981) CALVERT, CARROLL, CHARLES, FREDERICK, HOWARD, MONTGOMERY, PRINCE GEORGES, ST MARY'S AND WASHINGTON COUNTIES, MARYLAND	Basic Hourly Rates	Fringe Benefits
OMIT from geographic area covered by the decision and from Zone 2: Washington County		

DECISION NO. NY81-3024 - MOD. #6 (46 FR 20442 - April 3, 1981)	Basic Hourly Rates	Fringe Benefits
BRONX, KINGS, NEW YORK, QUEENS & RICHMOND COS., NEW YORK		
CHANGE:		
ASBESTOS WORKERS	15.64	6.29
BOILERMAKERS	19.09	32%+ .04
BRICKLAYERS	15.22	6.17
CARPENTERS		
Piledrivermen & Dock-builders	15.95	5.75
Diver	19.29	5.83
Diver Tenders	15.09	5.75
ELEVATOR CONSTRUCTORS	14.99	2.33+ a+b
ELEVATOR CONSTRUCTORS HELPER	11.24	2.33+ a+b
ELEVATOR CONSTRUCTORS HELPERS (PROBATIONARY)	7.50	
IRONWORKERS		
Ornamental Finisher	15.43	6.80
Structural	14.40	10.62
Riggers	13.24	8.0208
Stone Derrickmen	14.88	5.34
LABORERS		
Asphalt Laborers	12.40	2.85+h
Asphalt Raker	12.76	2.85+h
Asphalt Tampers	12.42	2.85+h
MARBLE SETTERS		
Cutters & Setters	13.49	4.19+j
Carvers	14.36	4.19+j
Polishers	14.17	4.19+j
Crane Operator	12.49	4.19+j
PAINTERS		
Brush & Roller	14.04	30%+.01
Spray & Scaffold	17.05	30%+.01
Fire Escapes	16.05	30%+.01
PLUMBERS		
NY, Bronx	14.56	7.34
Kings, Queens	16.32	5.65
Richmond	16.40	5.11
POINTERS, CAULKERS & CLEANERS	17.42	4.00+ .07
Steamcleaners	18.02	4.00+ .07
Sandblasters	18.67	4.00+ .07
ROOFERS		
Composition, Damp & Waterproofer	12.75	5.64
SPRINKLER FITTERS & STEAMFITTER	16.07	5.75
TILE SETTERS	13.025	2.25
TILE SETTERS HELPERS	11.71	1.825

DECISION NO. NY81-3045 - MOD. #2 (46 FR 37204 - July 17, 1981)	Basic Hourly Rates	Fringe Benefits
NIAGARA COUNTY, NEW YORK		
CHANGE:		
LABORERS; HEAVY, HIGHWAY, BUILDING CONSTRUCTION		
NIAGARA COUNTY: EXCEPT THE CITY OF NORTH TONAWANDA		
GROUP I	12.66	4.55
GROUP II	13.16	4.55
GROUP III	12.86	4.55
GROUP IV	13.93	4.55
CARPENTERS		
NIAGARA COUNTY: EXCEPT CITY OF NORTH TONAWANDA		
BUILDING CONSTRUCTION		
Carpenters	14.79	3.875
Millwrights	14.89	3.875
HEAVY, HIGHWAY		
Carpenters	11.015	3.875

DECISION NO. TX82-4001 - MOD. #7 (47 FR 4463 - 1/29/82) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Cement masons	$13.80	
Lathers	15.55	
Plasterers	15.55	.01

DECISION NO. TX82-4019 - MOD. #4 (47 FR 19935 - 5/7/82) Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos., Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Sound installers	11.36	.54+3% +c

DECISION NO. TX82-4024 - MOD. #4 (47 FR 26548 - 6/18/82) Travis County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Marble, tile & terrazzo workers	12.65	.75

DECISION NO. TX82-4029 - MOD. #5 (47 FR 26552 - 6/18/82) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Building Construction:		
Bricklayers	13.45	1.80

DECISION NO. TX82-4033 - MOD. #4 (47 FR 26549 - 6/18/82) Galveston & Harris Cos., Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Electricians:		
Galveston County:		
Electricians	$17.57	1.10+12%
Cable splicers	18.57	1.10+12%
Harris County	17.57	1.08+12%
Line construction:		
Zone 1:		
Linemen & cable splicer	18.10	.80+3½%
Groundmen	10.50	.80+3½%
Zone 2:		
Linemen & cable splicer	17.70	.80+3½%
Groundmen	10.27	.80+3½%

DECISION NO. WY82-5106 - Mod. #3 (47 FR 10968 - March 12, 1982) Converse, Goshen, Laramie, Natrona, Niobrara, and Platte Counties, Wyoming	Basic Hourly Rates	Fringe Benefits
Change:		
Sheet Metal Workers:		
Area 1	$14.18	$2.43

MODIFICATION PAGE 5

DECISION NO. CA82-5112 - Mod. #4
(47 FR 31154 - July 16, 1982)

Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba Counties, California

	Basic Hourly Rates	Fringe Benefits
Change:		
Brick Tenders:		
Area 2	$15.48	$3.70
Ironworkers:		
Fence Erectors	16.41	8.03
Reinforcing, Ornamental, and Structural	17.30	8.03
Plasterers:		
Area 1	17.33	4.43
Plumbers; Steamfitters:		
Area 6	15.47	8.65
Roofers:		
Area 4	14.80	2.85
Area 10:		
Kettleman (1 kettle)	15.01	5.72
Kettleman (2 kettles)	16.01	5.72
Bitumastic, Enameler, Coal Tar, Pitch, and Mastic	17.01	5.72

DECISION NO. CA82-5122 - Mod. #1
(47 FR 39075 - September 3, 1982)
San Diego County, California

	Basic Hourly Rates	Fringe Benefits
Change:		
Drywall Installers and Lathers	$19.90	$2.93
Elevator Constructors:		
Mechanics	22.24	a+2.69
Helpers	15.57	a+2.69
Probationary Helpers	11.12	
Ironworkers:		
Fence Erectors	16.41	8.03
Reinforcing; Ornamental; Structural	17.30	8.03
Omit:		
Rodman and Chainman from Power Equipment Operators' Group 4		

MODIFICATION PAGE 6

DECISION NO. CA82-5118 - Mod. #1
(47 FR 36513 - August 20, 1982)

Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties, California

	Basic Hourly Rates	Fringe Benefits
Change:		
Bricklayers; Stonemasons:		
Area 4	$17.50	$4.15
Area 5	17.09	4.61
Area 6	17.47	4.06
Drywall Installers	18.06	6.56
Electricians:		
Area 3:		
Electricians	21.52	3%+4.47
Cable Splicers	22.12	3%+4.47
Area 6:		
Electricians	19.00	3%+4.90
Cable Splicers	19.50	3%+4.90
Elevator Constructors:		
Area 1:		
Mechanics	22.24	a+2.69
Helpers	15.57	a+2.69
Probationary Helpers	11.12	
Area 2:		
Mechanics	27.295	a+2.69
Helpers	19.11	a+2.69
Porbationary Helpers	13.65	
Glaziers:		
Area 1	17.62	5.03
Ironworkers:		
Fence Erectors	16.41	8.03
Structural, Ornamental, and Reinforcing	17.30	8.03
Irrigation and Lawn Sprinklers	15.00	39%
Lathers:		
Area 2	18.52	3.63
Area 4	17.70	4.58
Line Construction:		
Area 7:		
Groundman	$15.74	3%+3.36
Lineman; Equipment Operators	20.98	3%+3.36
Cable Splicers	23.08	3%+3.36
Plasterers' Tenders:		
Area 5	17.97	6.52
Roofers:		
Area 2	14.55	1.55
Area 4	18.17	5.485
Sheet Metal Workers:		
Area 6	18.32	10%+4.05
Sprinkler Fitters:		
Area 2	22.39	2.57
Tile Setters:		
Area 2	17.68	3.16
Area 4	16.70	4.20

SUPERSEDEAS DECISION

STATE: ALABAMA COUNTY: CALHOUN
DECISION NUMBER: AL82-1049 DATE: DATE OF PUBLICATION
Supersedes Decision No.: AL82-1040 dated September 10, 1982 in 47 FR 39966.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION (does not include residential construction consisting of single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$ 7.75	
CARPENTERS	10.00	.75
CEMENT MASONS	9.00	
ELECTRICIANS	14.20	3⅛%+1.20
GLAZIERS	8.93	1.00
IRONWORKERS, Structural, Ornamental, & Reinforcing	9.25	1.475
LABORERS, Unskilled	4.53	
LATHERS	8.00	.11
PAINTERS:		
Brush	8.75	
Spray	7.85	
PLASTERERS	7.86	
PLUMBERS & PIPEFITTERS	14.00	1.42a
ROOFERS	6.50	
SHEET METAL WORKERS	$ 10.80	1.97
SOFT FLOOR LAYERS	6.50	
TILE SETTERS	7.70	
TRUCK DRIVERS	4.53	
WELDERS-Rate for Craft		
POWER EQUIPMENT OPERATORS:		
Backhoe	5.96	
Mechanics	7.50	

FOOTNOTE:
a. 4 Paid Holidays: July Fourth, Labor Day, Thanksgiving, & Christmas Day

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: GEORGIA COUNTIES: DEKALB & FULTON
DECISION NUMBER: GA82-1051 DATE: DATE OF PUBLICATION
Supersedes Decision Number GA82-1006, dated February 19, 1982, in 47 FR 7599.
DESCRIPTION OF WORK: HEAVY CONSTRUCTION PROJECTS (does not include Sewer & Water Lines Construction Projects).

	Basic Hourly Rates	Fringe Benefits
BRICK MASONS	$13.22	$ 2.10
CARPENTERS	13.50	1.77
CEMENT MASONS/FINISHERS	13.20	1.40
ELECTRICIANS	15.00	21%
IRONWORKERS	14.17	1.97
LABORERS:		
Unskilled	9.51	1.02
Air tool operators (air, electric, or gas powered, such as jackhammer, paving breaker, tamper, vibrator, spade, chipping hammer, & barco tamp), & pipe layers	9.73	1.02
Tunnel laborers	10.01	1.02
Powdermen	10.26	1.02
Miners	12.11	1.02
PAINTERS:		
Brush & Roller	13.00	2.45
Spray	14.00	2.45
PILEDRIVERMEN	13.65	1.77
PLUMBERS & PIPEFITTERS	14.60	2.24
SHEET METAL WORKERS	14.24	2.29
TRUCK DRIVERS	7.17	
WATERPROOFERS (ROOFERS)	10.45	.55
POWER EQUIPMENT OPERATORS:		
Crane	$13.35	$ 1.88
Backhoe, Mechanic, & Mucker	13.24	1.88
Bulldozer, Front end loader, & Motor grader	12.89	1.88
Oiler/Greaser, & Pump	9.65	1.88

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: Ohio COUNTIES: Clermont & Hamilton
DECISION NO. OH82-2040 DATE: Date of Publication
Supersedes Decision No. OH80-2011 dated March 21, 1980 in 45 FR 18654
DESCRIPTION OF WORK: Residential Construction Projects consisting of Single family homes and apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits		Basic Hourly Rates	Fringe Benefit
BRICKLAYERS/BLOCKLAYERS	$10.65				
CARPENTERS	7.67				
CEMENT MASONS	8.06				
DRYWALL FINISHERS/TAPERS	8.62				
DRYWALL HANGERS	7.00				
ELECTRICIANS	8.24				
INSULATORS	6.01				
LABORERS	5.18				
PAINTERS	6.00				
PLUMBERS/PIPEFITTERS	8.00				
ROOFERS	7.03				
SHEET METAL WORKERS	7.12	1.50			
TRUCK DRIVERS	7.30				
POWER EQUIPMENT OPERATORS					
BULLDOZER OPERATOR	10.07				
FRONT END LOADER	10.07				

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: SOUTH CAROLINA LOCATION: STATEWIDE
DECISION NUMBER: SC82-1050 DATE: DATE OF PUBLICATION
Supersedes Decision Number SC80-1047, dated January 25, 1980, in 45 FR 6310.
DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects, and railroad construction; bascule, suspension, and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges).

	Basic Hourly Rates	Fringe Benefits		Basic Hourly Rates	Fringe Benefits
ASPHALT DISTRIBUTOR	$ 4.23		MOTOR GRADER (FINE GRADE)	$ 5.77	
ASPHALT LAY-DOWN MAN	4.08		MOTOR GRADER (ROUGH GRADE)	5.00	
ASPHALT PAVER	4.84		PAINTER - BRIDGE	6.50	
ASPHALT PLANT	4.50		PILEDRIVER - LEADSMAN	7.00	
ASPHALT RAKER	4.44		PIPE LAYER	4.33	
ASPHALT SCREED	4.86		POWER TOOL OPERATOR	4.34	
BULLDOZER	5.55		ROLLER OPERATOR	4.16	
BULLDOZER (UTILITY)	4.50		ROLLER OPERATOR (FINISH)	4.93	
CARPENTER	6.10		SAW	5.00	
CARPENTER'S HELPER	4.84		SCRAPER	4.94	
CONCRETE FINISHER	5.62		SIGN ERECTOR	7.50	
CONCRETE FINISHER'S HELPER	4.50		TRACTOR OPERATOR (CRAWLER)	5.13	
CONCRETE FINISHING MACHINE	5.95		TRUCK DRIVER (ALL TYPES)	4.13	
CONCRETE PAVER	6.23		WELDERS	5.89	
CRANE, BACKHOE, DRAGLINE, & SHOVEL (ONE YARD & UNDER)	4.90		Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).		
CRANE, BACKHOE, DRAGLINE, & SHOVEL (OVER ONE YARD)	6.90				
FORM SETTER (ROAD)	5.25				
GREASEMAN	4.10				
HYDRO - SEEDER	5.00				
IRONWORKER - REINFORCING	5.79				
LABORER - UNSKILLED	4.08				
LOADER	5.00				
LUTEMAN	4.44				
MASON	6.56				
MECHANIC	5.65				

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Taylor
DECISION NO.: TX82-4045 DATE: Date of Publication
Supersedes Decision No. TX81-4009, dated 1/6/81, in 46 FR 1549.
DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories). (Use current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANICS	$ 8.14	
BRICKLAYERS	12.20	
CARPENTERS	9.22	
CEMENT MASONS	10.50	
ELECTRICIANS	13.50	1.30+ 3-1/4%
GLAZIERS	8.80	
IRONWORKERS:		
Structural,ornamental, reinforcing	12.50	2.95
Ironworkers on jobs 30 miles or more from the city of Abilene	12.625	2.95
LABORERS:		
Laborers	5.32	
Mason tenders	5.74	
PAINTERS	9.94	
PLASTERERS	$ 8.25	
PLUMBERS & PIPEFITTERS	13.08	1.60
ROOFERS	6.31	
SHEET METAL WORKERS	10.66	
TILE SETTERS	7.50	
TRUCK DRIVERS	6.25	
POWER EQUIPMENT OPERATOR:		
Cranes	13.125	1.425
Bulldozers	13.125	1.425
Graders	12.725	1.425
Oilers	11.825	1.425
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

[FR Doc. 82-26133 Filed 9-23-82; 8:45 am]
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federal register

Friday
September 24, 1982

Part III

Federal Trade Commission

Funeral Industry Practices; Trade Regulation Rule

FEDERAL TRADE COMMISSION

16 CFR Part 453

Trade Regulation Rule; Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Final Trade Regulation Rule.

SUMMARY: The Federal Trade Commission issues a final Rule, the purpose of which is to provide detailed information about prices and legal requirements to persons arranging funerals. The Rule will require disclosure of itemized price information, both over the telephone and in writing; prohibit misrepresentations about legal, crematory and cemetery requirements pertaining to disposition of human remains and prohibit certain unfair practices, such as embalming for a fee without prior permission or requiring consumers to purchase caskets when they intend to cremate the remains, or conditioning the purchase of any funeral goods and services on the purchase of any other funeral goods and services.

This notice contains the Rule's Statement of Basis and Purpose, the text of the Rule and a Regulatory Analysis relating to the final rule.

EFFECTIVE DATE: The Rule will become effective three months after the conclusion of Congressional review. The Commission will publish a further notice of effective date in the **Federal Register.**

ADDRESS: Requests for copies of the Rule, the Statement of Basis and Purpose, and the Regulatory Analysis should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Erica L. Summers, Division of Service Industry Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580 (202) 523–3413.

SUPPLEMENTARY INFORMATION: This Rule is being submitted to the Congress for review in accordance with Section 21 of the Federal Trade Commission Improvements Act of 1980, 15 U.S.C. 57a–1. Under that section, a Rule becomes effective unless both Houses of Congress disapprove the Rule within 90 calendar days of continuous session after the Rule is submitted. The present legislative review provision is scheduled to terminate on September 30, 1982. Assuming that a new legislative review process will be implemented after that date, the Commission has determined that the Rule should become effective three months after the conclusion of Congressional review. The Commission will publish a further notice of effective date in the **Federal Register** as soon as possible thereafter.

List of Subjects in 16 CFR Part 453

Funeral homes, Price disclosure, Trade practices.

By direction of the Commission, Chairman Miller dissenting.

Dated: September 20, 1982.

Carol M. Thomas,

Secretary.

Funeral Rule Statement of Basis and Purpose and Regulatory Analysis

I. Introduction

A. *Need for and Objectives of Rule.* Arranging a funeral plainly involves emotional, religious, and other important social considerations. At the same time, a funeral is more than a social ritual: it is also an expensive consumer purchase. In fact, the purchase of a funeral is the third largest single expenditure many consumers will ever have to make, after a home and a car. Although funeral costs vary substantially among funeral homes and among different kinds of dispositions and ceremonies, price surveys have found that the average funeral, which includes embalming, viewing, a ceremony with the body present and a procession to the cemetery followed by ground burial, costs the consumer between two and three thousand dollars. In recent years there have been approximately 1.9 million deaths annually, bringing the total amount which consumers spend on funeral and burial arrangements to over $5.2 billion per year.

While the arrangement of a funeral is clearly an important financial transaction for consumers, it is a unique transaction, one whose characteristics reduce the ability of consumers to make careful, informed purchase decisions. Decisions must often be made while under the emotional strain of bereavement. In addition, consumers lack familiarity with the funeral transaction: close to fifty percent of all consumers have never arranged a funeral before, while another twenty-five percent have done so only once. Further, consumers are called upon to make several important and potentially costly decisions under tight time constraints. Within hours of death, consumers must make arrangements to have the body of the deceased removed from the place of death and taken to a funeral home. Within at most 24 to 48 additional hours all additional decisions must be made concerning the form of disposition desired.

Under any circumstances, giving careful consideration to financial matters while arranging a funeral would be difficult. This difficulty is exacerbated, however, by several practices used by funeral providers which limit the consumer's ability to make informed, independent choices. The evidence indicates that a significant number of funeral providers:

(1) Require that consumers purchase "prepackaged" funerals, which may include goods and services which the consumers would not otherwise purchase;

(2) Misrepresent, either directly or by the failure to disclose material information: (a) that the law requires the purchase of embalming, a casket for cremation services, or grave liners and burial vaults; (b) the extent to which funeral goods and services have a preservative and protective value; and (c) that a mark-up is being charged on items such as flowers and obituary notices, commonly termed "cash advance" items;

(3) Require that consumers who wish to arrange direct cremation services purchase a casket for use in those cremations;

(4) Embalm the body of the deceased without first obtaining specific authorization to do so; and

(5) Refuse to discuss or fail to disclose price information over the telephone.

The Commission has concluded that these acts and practices are unfair or deceptive within the meaning of Section 5 of the Federal Trade Commission Act. Section II of this Statement contains a more detailed description of these acts and practices, as well as a discussion of the frequency with which they occur. The rule promulgated by the Commission prohibits these acts and practices and includes requirements designed to prevent their recurrence. The rule's goal is to lower existing barriers to price competition in the funeral market and to facilitate informed consumer choice. The rule will help achieve these goals by ensuring that: (1) Consumers have access to sufficient information to permit them to make informed decisions about which goods and services they wish to purchase; (2) consumers are not required to purchase goods and services which they do not want and are not required by law to purchase; and (3) misrepresentations are not used to influence consumers' decisions on which goods and services to purchase.

Under the provisions of the rule, funeral providers must give consumers a written list, prior to any arrangements discussion, containing the prices of the

funeral goods and services on an itemized basis. At the choice of the funeral provider, separate price lists may also be used to disclose the prices of caskets and outer burial containers. The rule also requires that funeral providers give price information to consumers who call on the telephone and ask about the terms, conditions, or prices at which funeral goods or services are offered by that funeral home. While the rule requires that price information be given to consumers in a relatively standardized, itemized format, it in no way interferes with the ability of funeral directors to offer their goods and services for sale in additional forms (*e.g.*, funeral packages).

To ensure that funeral consumers have the ability to select only the goods and services they want to purchase, the rule generally requires funeral providers to "unbundle" the goods and services they offer for sale and offer them on an itemized basis. Funeral providers may, however, continue to offer "package funerals" for sale as an alternative to itemized purchasing. The rule simply ensures that the consumer has the ability to make an itemized selection.

In addition to the general right to select goods and services on an individual basis, there are two other related provisions that concern items which funeral providers often have required consumers to purchase. First, the rule requires that funeral providers obtain express permission from a family member or representative before embalming is performed, except under special circumstances. This requirement is designed to ensure that consumers do not have to pay for enbalming which they neither asked for nor wanted. Second, the rule prohibits funeral providers from requiring that consumers purchase a casket for use in a direct cremation service. The rule requires funeral providers to offer an unfinished wood box or other alternative to a traditional casket for use in this form of direct disposition.

Finally, the rule prohibits several specifically described misrepresentations concerning legal requirements for burial, or cremation, and misrepresentations about the existence of mark-ups on cash advance items. To implement these prohibitions, the rule requires funeral providers to include several short disclosures on the general price list which they provide to consumers. These disclosures simply inform consumers of their legal rights and purchase options.

The rule also contains a provision which requires the Commission to start a rule amendment proceeding to review the effect and operation of the rule no later than four years after it becomes effective. This mandatory review will enable the Commission to determine whether the rule has worked as expected and will require the Commission to decide whether the rule should be modified or terminated within eighteen months after the proceeding has started. If the rule has been successful in stimulating price competition by that time, the Commission will decide whether the rule is still needed in light of the marketplace changes. This provision ensures that the Commission will decide whether there is a continuing need for regulation of the funeral industry at an early date and in a proceeding open to public participation.

This overview has highlighted the central elements of the rule. Virtually all of its other provisions, including certain definitions, are designed to ensure the integrity of this disclosure scheme and to prohibit misrepresentations of material information. The rule promulgated today is substantially more limited than that which the Commission originally proposed. These modifications are the result of the Commission's careful consideration of the extensive testimony and comments submitted on three different occasions, as well as Congressionally-mandated limitations (discussed below) on the rule's subject matter. The Commission believes that this rule will effectively curb many of the unfair or deceptive practices identified in the rulemaking record with minimal intrusion into the business operations of funeral providers.

B. *History of the Proceeding.* In December of 1972, at the direction of the Commission, the Commission's Bureau of Consumer Protection began an initial investigation of practices in the funeral industry.[1] During the initial investigation, the Commission's staff interviewed consumers, funeral directors, memorial society members, attorneys, state officials and others, and also visited funeral homes. These efforts led the staff to conclude that a more detailed examination of the industry's practices was warranted. The staff made this recommendation in June, 1973, in a 239 page planning report to the Commission.[2] The Commission subsequently approved a full industry-wide investigation and authorized the use of compulsory process.

An Initial Staff Report by the staff of the Bureau of Consumer Protection based on the industry-wide investigation was published in August, 1975. In that report, the staff recommended that the Commission initiate a rulemaking proceeding pursuant to its authority under Sections 5 and 18 of the Federal Trade Commission Act.[3] The Initial Staff Report described practices relating to the purchase of funeral goods and services which may have violated Section 5 of the Act.

After reviewing the Initial Staff Report, the Commission published an Initial Notice of Proposed Rulemaking ("Initial Notice") on August 29, 1975.[4] It contained the text of a proposed rule, a statement of the Commission's reasons for issuing it, and an invitation to comment on the proposal.

Written comments on the Initial Notice were received through March 6, 1976. More than 9,000 separate documents were received, comprising approximately 20,000 pages. Numerous comments were made by individual funeral industry members, state and national funeral trade associations, individual consumers, consumer groups, state regulatory boards, state and local government officials, representatives of funeral-related industries including florists, cemetery operators, and casket and vault manufacturers, memorial societies, clergymen, academics, and other interested parties.

On February 20, 1976, the Final Notice of Rulemaking ("Final Notice") was published by the Presiding Officer in the funeral proceeding.[5] The Final Notice set out thirty disputed issues of fact to serve as the focus for the public hearings on the proposed rule.[6] Public hearings were

[1] The proposal for a limited initial investigation stemmed from an internal staff analysis suggesting a potential for abuse in the funeral transaction, given the unique disadvantages of the funeral purchaser. While few consumer complaints had been received at the time, the potential for consumer injury had been documented by hearings chaired by Senator Phillip Hart in 1964. *Antitrust Aspects of the Funeral Industry: Hearings Pursuant to S.R. 262 Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 88th Cong., 2d Sess. (1964) (hereinafter cited as *Antitrust and Monopoly Subcomm. Hearings*). This policy planning approach to identifying areas of potential consumer injury was a direct response to criticism made by the American Bar Association in the late 1960s that the Commission relied too heavily on consumer complaints and consequently chose trivial cases for investigation.

[2] Division of Evaluation, Bureau of Consumer Protection, *Unfair Practices in the Funeral Industry: A Planning Report to the Federal Trade Commission*, June 29, 1973.

[3] 15 U.S.C. 45, 57.

[4] 40 FR 39901 (1975).

[5] 41 FR 7787 (1976).

[6] Prior to the hearings, the National Funeral Directors Association sought to enjoin the hearings in federal court, alleging a number of procedural improprieties and Commission action in excess of its statutory authority. The court denied the injunction. *NFDA* v. *FTC*, 76-0615 (D.D.C., filed April 14, 1976).

held in six cities from April 20 through August 6, 1976.[7] In all, 52 days of hearings were held during which 315 witnesses presented testimony and exhibits and were subject to cross-examination by the various participating parties. The six hearings produced 14,719 pages of transcript and approximately 4,000 additional pages of exhibits.

At the conclusion of the public hearings, a final opportunity for comment was offered the public to rebut any data or views which had previously been submitted into evidence. Forty-seven separate rebuttal submissions were filed by the Commission staff and various parties to the proceeding.

At the conclusion of the public hearing process, reports to the Commission based on the rulemaking record were prepared by the Presiding Officer,[8] who made findings on the issues which had been designated by the Commission for the public hearings, and by the Commission staff,[9] who analyzed the record evidence and made recommendations to the Commission for final action. The Presiding Officer found that the funeral transaction has several characteristics which place the consumer in a disadvantaged bargaining position relative to the funeral director, leave the consumer vulnerable to unfair and deceptive practices, and cause consumers to have little knowledge of legal requirements, available alternatives respecting disposition of the dead, and funeral homes' offerings and prices. The Presiding Officer also found that some funeral providers fail to disclose relevant purchase information to consumers while some other funeral providers affirmatively misrepresent legal, public health and/or religious requirements to customers. The staff, after reaching similar conclusions,[10] recommended a revised trade regulation rule which differed from the initial proposed rule in several respects.

Following publication of these reports, the Commission commenced a comment period to permit the public to comment on the reports of the Presiding Officer and the staff.[11] This comment period was originally scheduled to close after 60 days; however, the Commission extended it for 30 days to afford a greater opportunity to comment.[12] Over 1300 separate comments were received during the comment period. To assist the Commission in reviewing them, the Commission's staff prepared a summary, which accompanied the comments to the Commission. This summary [13] essentially indexed the comments filed, identifying each issue of fact, law or policy raised in the comments. The summary was made available to the Commission as well as to outside parties. On February 2, 1979, the Commission's staff forwarded to the Commission their final recommendations.

On February 27 and 28, 1979, the Commission heard oral presentations from selected rulemaking participants who had been invited to present their views directly to the Commission as provided in § 1.13(i) of the Commission's Rules, 16 CFR 1.13(i).[14]

On March 23, 1979, the Commission met in open session, tentatively approved a final funeral rule and directed the staff to prepare the necessary legal memoranda to implement it. The tentative final rule adopted by the Commission was substantially more limited than the one which the Commission had originally proposed. It required that price information be made available over the telephone, that funeral goods and services be sold on an individual basis enabling consumers to decline goods and services which they did not want, that prior permission be obtained for embalming, and that consumers not be required to purchase caskets for use in cremation. The rule also included a prohibition on deceptive claims and representations concerning legal and cemetery requirements. However, several other major provisions contained in the proposed rule were dropped.[15]

Prior to promulgation, however, Congress adopted the FTC Improvements Act of 1980.[16] Section 19 of that Act imposed a set of procedural and substantive limitations on the Commission's authority to promulgate a rule regulating practices within the funeral industry.[17] Procedurally, Section 19(c)(2)(A) required the Commission to republish a proposed rule in the **Federal Register** for public comment before the Commission could promulgate a final rule.[18]

During the hiatus in the rulemaking proceeding which attended Congressional consideration and subsequent enactment of the Improvements Act of 1980, a second event occurred which necessitated a revision of the rule. In December of 1979, the United States Court of Appeals for the Second Circuit issued its opinion on the Commission's trade regulation rule concerning practices in the proprietary vocational school industry.[19] In adopting

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[7] Hearings were held in Atlanta, Chicago, Los Angeles, New York City, Seattle and Washington, D.C.

[8] Report of the Presiding Officer on Proposed Trade Regulation Rule Concerning Funeral Industry Practices (16 CFR Part 453), July 1977 (hereinafter cited as "Report of the Presiding Officer").

[9] Funeral Industry Practices, Final Staff Report to the Federal Trade Commission and proposed Trade Regulation Rule (16 CFR Part 453), June 1978 (hereinafter cited as "1978 Staff Report").

[10] There were several areas of disagreement between the Presiding Officer and the rulemaking staff. For example, the Presiding Officer, in contrast to staff, found insufficient evidence of consumer injury in the rulemaking record to warrant promulgation of a rule provision prohibiting unauthorized removal of remains. *See* Report of the Presiding Officer, *supra* note 8, at 57. The Presiding Officer also concluded that several practices, such as refusal to release remains or requiring a casket for cremation, were not prevalent, although sufficiently harmful when they occurred to warrant prohibition in the rule. *Id.* at 59, 64. Finally, the Presiding Officer felt that there was insufficient evidence on the rulemaking record to make a finding on the prevalence of certain practices, including misrepresentation of cash advance charges and misrepresentation of legal, public health, and/or religious requirements. *Id.* at 68, 73. The staff disagreed with this assessment and reviewed the record evidence in detail in their report. 1978 Staff Report, *supra* note 9, at 251–259, 269–294.

[11] 43 FR 26588 (1978).

[12] 43 FR 34500 (1978).

[13] Summary of Post-Record Comments on the Funeral Industry Practices Rule, January 25, 1979, XIV–1368.

[14] The participants were U.S. Congressman Marty Russo; National Retired Teachers Association and American Association of Retired Persons; National Selected Morticians; International Order of the Golden Rule; U.S. Small Business Association; New York State Consumer Protection Board; Cremation Association of North America; Americans for Democratic Action and National Council of Senior Citizens; National Funeral Directors Association; Continental Association of Funeral and Memorial Societies; National Funeral Directors and Morticians Association; New York State Public Interest Research Group; Pre-Arrangement Interment Association of America; and California Citizens Action Group.

[15] For example, the Commission eliminated provisions which would have prohibited unauthorized removal of or refusal to release remains, as well as provisions which would have set restrictions on the manner in which funeral providers could display caskets. See Section III(B), *infra*.

[16] Public Law 96–252, 94 Stat. 391.

[17] The substantive limitations imposed by Section 19(c)(1), and the manner in which the rule complies with them, are discussed in Part I(C), *infra*.

[18] The text of Section 19(c)(2)(A), 15 U.S.C. 57a note, states:

"(2)(A) The Commission, before issuing the funeral trade regulation rule in final form—

"(i) shall publish in the **Federal Register** for public comment a revised version of the funeral trade regulation rule which contains the provisions specified in subparagraph (A) and subparagraph (B) of paragraph (1);

"(ii) shall allow interested persons to submit written data, views, and arguments relating to such revised version of the funeral trade regulation rule, and make all such submissions publicly available; and

"(iii) may permit interested persons or as appropriate, a single representative of each group of such persons having the same or similar interests with respect to such revised version of the funeral trade regulation rule, to present their position orally.

[19] Proprietary Vocational and Home Study Schools Trade Regulation Rule, 16 CFR Part 438.

the rule, the Commission had defined and described the underlying unfair and deceptive acts and practices which were the predicate for the final rule in the Statement of Basis and Purpose which accompanied the rule. Within the text of the rule itself, the Commission included only the remedial requirements designed to prevent the unfair acts and practices from recurring.

In *Katharine Gibbs School, Inc.* v. *FTC*, 612 F.2d 658 (2d Cir. 1979) (hereinafter *"Gibbs"*) the Second Circuit held that the Magnuson-Moss Act requires the Commission to include in the actual text of a rule a description of the underlying unfair or deceptive acts or practices which serve as its basis.[20] The version of the funeral rule pending before the Commission in 1979 had been drafted in the same manner as the Vocational School Rule, *i.e.*, in several provisions only the remedial language was actually included in the rule.

On December 17, 1980, the Commission met to consider revisions of the proposed funeral rule in light of Section 19 of the FTC Improvements Act of 1980 and the *Gibbs* decision. At this meeting, the Commission voted to publish for public comment a revised version of the funeral rule. The Commission published a notice on January 22, 1981,[21] which contained the text of the revised version of the funeral rule and set forth a sixty-day written comment period. The Commission also provided for a rebuttal period in which parties could respond to comments submitted by other interested parties concerning the revised rule.

On July 7 and 8, 1981, the Commission heard oral presentations from several major participants in the funeral rule proceeding.[22] On July 22, 1981, the Commission met in open session and approved language of the funeral rule for purposes of submitting the rule's recordkeeping requirement to the Office of Management and Budget (OMB) for review. On June 7, 1982, OMB approved the recordkeeping requirement. After careful consideration and review of the rulemaking record taken as a whole, the Commission has voted to promulgate a trade regulation rule concerning funeral industry practices.

C. *Consistency With Applicable Law.* The funeral rule is being issued under the authority granted the Commission by Section 18 of the FTC Act,[23] as limited by Section 19 of the FTC Improvements Act of 1980.[24] Section 18 of the FTC Act permits the Commission to issue rules defining with specificity acts or practices which are unfair or deceptive under Section 5 of the FTC Act.[25] The Commission further is authorized to include in its rules provisions designed to prevent the defined unfair or deceptive acts or practices. The rule being issued today prohibits and prevents practices which are unfair, deceptive, or both.[26] As such, it is within the Commission's authority under Section 18 of the FTC Act.

The funeral rule, as issued, also complies with the restrictions imposed by Section 19 of the FTC Improvements Act of 1980. Section 19(c)(1) allows the Commission to expend funds to issue and enforce the funeral rule only to the extent that the rule:

"(A) requires persons, partnerships, and corporations furnishing goods and services relating to funerals to disclose the fees or prices charged for such goods and services in a manner prescribed by the Commission; and

"(B) prohibits or prevents such persons, partnerships, and corporations from—

"(i) engaging in any misrepresentation;

"(ii) engaging in any boycott against, or making any threat against any other person, partnership, or corporation furnishing goods and services relating to funerals;

"(iii) conditioning the furnishing of any such goods or services to a consumer upon the purchase by such consumer of other such goods or services; or

"(iv) furnishing any such goods or services to a consumer for a fee without obtaining the prior approval of such consumer.[27]

The Commission has revised the rule to ensure that it falls within the substantive limits imposed by Section 19. Thus, § 453.2 of the rule requires price disclosures, as permitted by Section 19(c)(1)(A). Section 453.3 of the rule prohibits misrepresentations, as permitted by Section 19(c)(1)(B)(i). Section 453.4 prohibits funeral providers from requiring a casket for cremation or from conditioning the furnishing of any funeral goods and services upon purchase of any other funeral good or funeral service. These provisions are permitted by Section 19(c)(1)(B)(iii). Finally, § 453.5 of the rule prohibits funeral providers from embalming for a fee without prior approval, as permitted by Section 19(c)(B)(iv).

D. *The Funeral Service Industry.*—1. *The Funeral Home.* In the United States today there are over 22,000 funeral homes, 50,000 licensed funeral directors and embalmers, and over 400 crematories.[28] In recent years the number of deaths has approached two million per year.[29] The average annual number of deaths per funeral establishment has been about 94.[30] Actual case volume at each funeral establishment varies greatly. Various industry sponsored studies indicate that 50% to over 75% of all funeral homes perform fewer than 100 funerals per year.[31]

The funeral industry is generally composed of small businesses. One report states that 80% of all funeral homes have fewer than seven employees;[32] another report found that 42.9% of the firms in the industry were individual proprietorships[33] and that

[20] 612 F.2d at 662.

[21] 46 FR 6976 (1981). During the written comment period, the National Selected Morticians and the National Funeral Directors and Morticians Association submitted in their comments a modified rule ("NSM/NFDMA proposal") for Commission adoption in lieu of the rule published in the Federal Register. The NSM/NFDMA proposal is discussed in Part III(B)(4), *infra*.

[22] The selected participants were National Funeral Directors Association; National Retired Teachers Association and American Association of Retired Persons; National Funeral Directors and Morticians Association; National Selected Morticians; Continental Association of Funeral and Memorial Societies; Pre-Arrangement Interment Association of America; Cremation Association of North America; New York Public Interest Research Group; National Council of Senior Citizens and Consumer Affairs Committee of Americans for Democratic Action; Conference of Funeral Service Examining Boards; International Order of the Golden Rule; New York State Funeral Directors Association; Congressman Marty Russo; and Congressman Andy Ireland.

[23] 15 U.S.C. 57.

[24] 15 U.S.C. 57a note.

[25] Section 5(a)(1) of the FTC Act declares unlawful "unfair or deceptive acts or practices in or affecting commerce" through trade regulation rules. The Commission has concluded that it has jurisdiction over funeral providers because their business is "in or affecting commerce." For example, funeral providers sell a variety of merchandise which is shipped in interstate commerce. Many also ship human remains across state lines for funeral purposes. For discussion of these and other bases of the Commission's jurisdiction over funeral providers, *see* 1978 Staff Report, *supra* note 9, at 468–73.

[26] The Commission's reasons for defining practices as unfair or deceptive are set forth in Part II (A)(I), *infra*.

[27] 15 U.S.C. 57a note.

[28] 1972–73 American Bluebook of Funeral Directors; 1978 U.S. Industrial Outlook 463; V. Pine, Caretaker of the Dead 21 (1973).

[29] In 1972, the death rate was calculated at approximately 90 per 1,000 or over 1.9 million. Public Health Service, U.S. Dep't. of HEW, 1972 Vital Stat. of the United States: Mortality, Volume II, Part A, at Table 1–1.

[30] *Hearings on Regulations of Various Federal Agencies and Their Effect on Small Business, Before the Subcomm. on the Activities of Regulatory Agencies of the House Small Business Comm. (Part III)*, 94th Cong., 2d Sess. at 65, 75–76 (1975–1976). (Attachment to testimony of H. Raether) (hereinafter cited as *"House Small Business Subcomm. Hearings"*).

[31] *See, e.g.*, V. Pine, A Statistical Abstract of Funeral Services Facts and Figures, 1976, D.C. Ex. 4, at 3 (hereinafter cited as "1976 Statistical Abstract").

[32] U.S. Dept. of Commerce, [1973] Country Business Patterns, at 26.

[33] 1972 Census of Selected Service Industries, Volume I, at 7.

most of the rest operate as partnerships or private corporations.[34] The industry also is characterized by low rates for entry and exit,[35] with most funeral homes operating in local markets. Recently, however, there has been a slight trend toward the development of funeral home chains.[36] The largest chain is Service Corporation International and the second largest is International Funeral Services. These firms have expanded by purchasing existing funeral homes around the country.[37] Recently these two funeral chains merged.

2. *State Licensure.* The first formal instructional programs for the American funeral industry began with a few trade schools which taught embalming, sanitation, anatomy and other related subjects in a program of short duration.[38] Today there are approximately thirty vocational and college level programs accredited at the state level. The curriculum in these educational programs includes instruction in management principles, merchandising techniques, accounting, public speaking and grief counseling as well as in embalming and restorative arts.[39]

State regulation of the industry began in the latter half of the nineteenth century and arose due both to the public's growing concern over sanitation and the efforts of funeral directors to achieve greater professional stature.[40] Today virtually all states license embalmers and/or funeral directors. Generally, state licensing standards require completion of a nine month to one year vocational training program in mortuary science followed by a period of apprenticeship varying from one to three years in length before qualifying to take the state board examination.[41]

3. *Trade Associations.* The development of the funeral industry as a state-licensed occupation occurred along with the formation of a variety of state and national trade associations. The largest of the national funeral trade associations is the National Funeral Directors Association (NFDA) with 14,000 members who conduct approximately 70% of the nation's funerals.[42] The National Funeral Directors and Morticians Association (NFDMA) is the association of black funeral directors and, with over 4,000 members, is the second largest national trade association.[43] National Selected Morticians (NSM) is a national trade group with slightly over 800 member firms.[44] Unlike NFDA, NSM is an association of funeral home firms and not individual funeral directors.[45] Another national trade group is the Order of the Golden Rule (OGR) with 1400 members.[46] A number of smaller organizations serving limited memberships also exist. Two examples are the Jewish Funeral Directors Association (JFDA) and the Pre-Arrangement Interment Association of America (PIAA). JFDA has approximately 200 members,[47] and PIAA has approximately 700 members dedicated to the promotion and sales of the pre-financed funeral.[48] In addition to these national trade associations, all states except Alaska have funeral trade associations. In all but one of these states, membership in the state association brings concurrent membership in NFDA.

State and national funeral trade associations provide a wide range of services to members—newsletters, journals, national and regional meetings, informational and educational programs, consultants, and the collection of statistical information. A number of trade associations also have enacted codes of ethics which set forth conduct which is considered to be unprofessional.

4. *Pre-need Sales Industry.* This segment of the funeral industry is involved in the promotion and sale of funeral-related goods and services prior to the time of death. In this type of arrangement, payment is made to the funeral seller in advance of death and the particular goods and services selected by the buyer are specified in a pre-need contract.[49] Pre-need plans are marketed by insurance companies, funeral homes, and cemetery operators of cemetery lots, vaults, monuments, and crypts.

5. *Immediate Disposition Companies.* In some areas of the country, immediate disposition companies compete with full service funeral homes. These companies provide a single service—direct disposition of human remains by cremation. They generally do not provide facilities for viewing the body or conducting services, nor do these companies attempt to sell merchandise such as caskets or services such as embalming. Immediate disposition companies offer the service of picking up the body, delivering it to the crematory and returning the ashes. The disposition fee in 1977 was generally less than $300.[50]

6. *Memorial Societies.* Memorial societies are non-profit consumer cooperatives organized for the purpose of providing information and assistance to their members concerning funeral arrangements. They do not sell funeral goods and services. Some not only provide information on funeral arrangements to their members, but also enter into agreements with cooperating morticians to obtain specified services for their members at prices determined in advance.[51] The major organization representing the 140 member societies and over 500,000 individual members in the United States is the Continental Association of Funeral and Memorial Societies (CAFMS). These societies are staffed primarily by volunteers and pay operating expenses from membership

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[34] *Id. See also,* Blackwell, "Price Levels in the Funeral Industry," 7 *Q. Rev. of Econ. and Bus.*, VI–A–2, at 75–76 (1976) (hereinafter cited as "Blackwell article").

[35] Blackwell article, *id.* at 77; G. Kissel, An Analysis of the Market Performance of the Funeral Home Industry of Philadelphia (1970) (Wharton School M.B.A. Project), VI–D–23, at 57, 59, 62–65, 70 (hereinafter cited as "Kissel").

[36] Kollat, D.C. Ex. 8, at 13 and Table 8.

[37] 1978 Staff Report, *supra* note 9, at 85, n. 238.

[38] *See* R. Habenstein and W. Lamers, The History of American Funeral Directing 510 (1962) (hereinafter cited as "The History of American Funeral Directing").

[39] Funeral Service: Meeting Needs * * * Serving People, (NFDA pamphlet), Hausman Ex. 1 (N.Y.), at 5.

[40] The History of American Funeral Directing, *supra* note 38, at 450–551.

[41] *See, e.g.*, Tenn. Code Ann. § 62–514(6) (1976); N.M. Stat. Ann. § 67–20–17 (1974 Supp.); Fla. Stat. Ann. § 470.08(1) (1978 Supp.); Va. Code § 54–260.70 (1974). Other states require some college work. *See, e.g.*, Mont. Rev. Code § 66–2708 (1977 Supp.); North Dakota State Board of Embalmers, "Laws, Rules, and Regulations," Rule 43–10–04(3) (1972).

[42] *See House Small Business Subcomm. Hearings (Part III), supra* note 30, at 64 (testimony of H. Raether). NFDA has apparently doubled its membership since 1936. The History of American Funeral Directing, *supra* note 38, at 534.

[43] *House Small Business Subcommittee Hearings (Part IV), supra* note 30, at 24 (testimony of R. Miller, Exec. Dir., NFDMA).

[44] The American Blue Book of Funeral Directors 779 (1976–77).

[45] The History of American Funeral Directing, *supra* note 38, at 537.

[46] American Blue Book of Funeral Directors 785 (1978–79).

[47] American Blue Book of Funeral Directors 778 (1976–77).

[48] *See* PIAA Comment on Revised Rule, XVI–77, at 1.

[49] The seller may be an individual funeral home which makes specific, prepaid arrangements with consumers or a company which specializes in selling prepaid funeral contracts. During the rulemaking proceeding, the sellers of prepaid funeral arrangements have been generally represented by the Pre-Arrangement Interment Association of America (PIAA), which participated as an interested party under Section 1.13(d)(3) of the Rules of Practice. *See generally* PIAA, Proposal Identifying Issues of Fact, II–C–246; Rebuttal of PIAA, X–6. The seller of funeral contracts acts as a broker between buyers and cooperating funeral homes. *See* P. Butler, Exec. Vice Pres., Funeral Security Plans, Inc., D.C. Stmt.

[50] 1978 Staff Report, *supra* note 9, at 82.

[51] *See* Handbook for Funeral and Memorial Societies, D.C. Ex. 39, at II–1 and Appendix; R. Cohen, Exec. Sec., CAFMS, Tx 14,207–10.

fees (usually $5 to $15), contributions and bequests, fundraising events and interest on reserve funds.[52]

E. The Funeral Consumer. Perhaps the most important element in understanding the nature of the problems which have arisen in the funeral market is a thorough understanding of the funeral consumer—the person called upon to make the arrangements for burial or cremation of a spouse, parent, child, other relative or friend. The arrangement of a funeral is often a very expensive transaction. In 1977, annual payments by consumers to funeral homes and crematories exceeded $3.4 billion.[53] A variety of related expenditures such as cemetery charges, flowers and obituary notices represented an additional expenditure of approximately $1.8 billion, bringing the total amount which consumers spent on funeral related expenses to an estimated $5.2 billion.[54] Reducing these numbers to a more personal basis, the average expenditure for a funeral was approximately $2360.[55]

Despite the magnitude of the financial commitment consumers are called upon to make in arranging a funeral, several factors limit their ability to make a carefully considered decision. The funeral transaction is one with which most consumers are unfamiliar. Studies show that over 50% of the adult population, although having attended prior funerals, have never been called upon to arrange one. Yet another 25% of the adult population have only arranged one prior funeral.[56] Thus, close to three-fourths of the population is either wholly inexperienced, or has had only one such experience. Unlike some transactions where consumers will have repeat encounters with sellers in the marketplace, the funeral consumer's purchase decisions are often once-in-a-lifetime decisions, or extremely infrequent ones.

In any transaction where consumers without substantial experience are called upon to make purchase decisions which carry with them substantial price tags, the potential for abuse exists. Other characteristics of the funeral consumer exacerbate this potential for marketplace problems. As discussed below, the two most important of these characteristics are the time-frame in which consumers must act and the psychological state of the persons who must make these important decisions.

While there is no such thing as an "average" or "typical" funeral consumer, some general findings can be made on their mental and emotional state. Often the funeral consumer is grief-stricken, particularly where a close relative or friend is involved; shock and confusion also attend such a death. Research by experts in the field suggests that many consumers feel guilt with respect to the deceased, and view the funeral as the final opportunity to "do right" by the deceased.[57] Others noted the characteristics of dependency and suggestibility following a death.[58] While funeral purchasers are far from helpless, such emotional strains make careful, rational decisions far more difficult than in the typical consumer purchase. In no other situation is a consumer called upon to make decisions about such an expensive purchase under such difficult emotional circumstances.[59]

The need to make prompt decisions about removing the body of the deceased from the place of death and selecting the form of disposition to be employed also serve to distinguish this transaction from other consumer transactions. Where the arranger selects direct cremation or immediate burial, final disposition typically occurs within 24 hours of death. Even in the more traditional funeral setting, involving viewing and ceremony, the necessary decisions still must be made under tight time strictures, normally 24–48 hours from death.[60] Comparison shopping by consumers is not impossible under these circumstances—indeed, one goal of the rule is to facilitate this type of shopping even at the point of need. But under any objective evaluation, comparison shopping is rendered substantially more difficult.

Perhaps the most critical decision which a bereaved consumer must make, and the decision with the tightest time strictures, is whom to contact to remove the body from the place of death. The evidence shows that once a funeral home has been given possession of the body, rarely, if ever, will a consumer move that body to another funeral home in the same community.[61] Thus, in many situations, a consumer may be called upon to select a funeral home on extremely short notice, wholly unexpectedly. The consumer has no time to plan or to arrange finances, or to put the purchase off until a better time. If the home selected does not offer the particular goods or services desired by

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[52] *Id.*

[53] U.S. Dep't. of Commerce, 1977 U.S. Industrial Outlook with Projections to 1985, at 498–99.

[54] *See* 1978 Staff Report, *supra* note 9, at 153–54, which lists related charges equal to $968 per funeral, or approximately $1.8 billion per year.

[55] *Id.*

[56] M. Simmons, A Comparison of Knowledge and Opinions of the Funeral Industry Held by Urban and Rural Consumers in Central New York State 39 (Table 3) (Jan. 1975), VI–D–4. Another survey by Dr. Richard Kalish, commissioned by the FTC staff, found similar results: 48% of the respondents had never before made funeral arrangements; another 29% only once before. D.C. Ex. 24, Table 7 (hereinafter cited as "Kalish Survey"). The evidence further shows that most consumers, even those who have arranged funerals, lack knowledge about prices and legal requirements. For example, in one survey of persons who had arranged funerals, 75% did not know about the legal requirements for embalming. *See* Maryland Citizens Consumer Counsel, D.C. Ex. 36, at 1–2. Similarly, in a 1965 survey, 78% of the respondents gave no response when asked what the average price of a funeral was in their community. An even higher percentage, 91%, gave no response when asked what the national average price of a funeral was. *See* R. Fulton, *Attitudes of the American Public Toward Death*, in Death and Identity 95 (1965). Other surveys also support the conclusion that consumers lack knowledge about funeral arrangements. *See, e.g.*, Dr. C. Collette-Pratt, Sea. Ex. 1, Tx 5237–44 (survey of 400 persons shows little knowledge of what constitutes funeral or what alternatives are); M. Stillwell, Tx 6032–33 (analysis of 139 responses shows general lack of knowledge about funerals by public).

[57] *See, e.g.*, Rabbi E. Grollman, Industry Consultant, Tx 840; Sister J. Corcoran, Tx 7208–09; Dr. M. Bluebond-Langner, Ass't Prof. of Anthropology, Rutgers Univ., Tx 2372; J. Hammon, New York minister, Tx 463; P. Leslie, California minister, II–C–1221. *See also* W. Brown, Ohio Attorney General, II–C–1229; Dr. M. Blum, The Attitudes and Reactions of a Limited Sample of South Dade County Residents Toward Funeral Arrangements, D.C. Ex. 11, at 16 (hereinafter cited as "Blum Study"); Pine & Phillips, The Cost of Dying: A Sociological Analysis of Funeral Expenditures, 17 Social Problems 405, 413 (1970), VI–D–64.

[58] The testimony of experts describes the "hypersuggestibility" of bereaved individuals and their tendency to rely on the funeral director. *See, e.g.*, Dr. N. Humphrey, President of the California Chapter of the National Association of Social Workers, D.C. Ex. 45, at 4; Dr. C. Wahl, psychiatrist psychoanalyst, Southern California Psychoanalytic Institute, Tx 8481; Dr. J. Quint Benoliel, Professor, University of Washington School of Nursing, Tx 5297 (citing I. Glick, R. Weiss, and C. Parkes, *The First Year of Bereavement* 104 (1975)); R. Ebeling, Tx, 6825.

[59] In the majority of cases, a person arranging a funeral is accompanied by another person, most frequently a member of the immediate family. Dr. R. Blackwell, Funeral Services Attitudinal Survey, D.C. Ex. 29 [hereinafter cited as "Blackwell Survey"] (nearly 95% of the persons making arrangements were accompanied by one or more persons; 90% were members of the immediate family.) While support from the family members may help make arranging a funeral less difficult, other members of the immediate family are likely to be under much of the same emotional stress and other disadvantages as the person with primary responsibility for making the arrangement decisions.

[60] Several of the surveys asked consumers why they did not "shop around" before making a decision. Insufficient time was cited by 36% of the respondents in one (*see* D.C. Ex. 45, at A–6), 21% in another (Cohen, Consumer Questionnaire Form A, D.C. Ex. 39, at A–6 (hereinafter cited as "CAFMS Survey"), and between 15–28% in another (D.C. Ex. 11, at 47).

[61] *See, e.g.*, R. Harmer, Bd. member, CAFMS, Prof., California State Poly. U., D.C. Ex. 7, at 6; D. Cornett, California funeral industry sales representative, X–1–124; L. Bowman, The American Funeral 52 (paperback ed. 1964). In addition, a family is likely to be in a very fragile emotional state in the first few hours after death so that any problem in locating or moving the body can cause additional anguish.

the consumer, essentially all options have been foreclosed.

Thus, the funeral transaction possesses some unique characteristics which differentiate it from most, if not all, other consumer transactions. The combination of emotional stress, lack of experience, lack of information and tight time strictures results in the funeral consumer being very susceptible to influence from the funeral director's advice and counsel.[62]

In the sections which follow, the specific unfair and deceptive practices which the Commission has found to occur in this market will be discussed together with an analysis of the Rule provisions adopted by the Commission to address them.

II. The Rule Provisions

A. *Section 453.2—Price Disclosure.* Section 453.2(a) of the rule defines as an unfair act or practice the failure of a funeral provider to furnish information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies. There is substantial evidence in the rulemaking record that funeral providers have frequently failed to provide consumers with sufficient information about the prices of funeral goods and services. The record shows that funeral providers generally do not advertise prices, usually do not provide price information over the telephone, and usually do not provide consumers with information on the price of specific items of funeral merchandise and services. As we discuss below, this lack of information, particularly with respect to prices, restricts the consumer's ability to make an informed choice and impairs the efficient operation of the funeral market. The rule is designed to address these problems by requiring funeral providers to give consumers the information necessary for them to make an informed purchase decision.

1. *Unfair Acts or Practices.* Section 453.2 is being issued pursuant to the Commission's authority under Sections 5 and 18 of the Federal Trade Commission Act to proscribe unfair acts or practices. Section 18(a)(1) of the FTC Act states:

> The Commission may prescribe * * * rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce (within the meaning of * * * Section 5(a)(1)).

In December of 1980, the Commission prepared a formal statement analyzing the legal basis for the exercise of its Section 5 consumer unfairness jurisdiction. That document, prepared in response to a request from the Senate Commerce Committee,[63] reviewed the Commission's prior exercise of its unfairness jurisdiction, and clarified the criteria under which this authority will be exercised in the future.[64]

Consumer injury is the focus of the consumer unfairness doctrine. In its recent statement, the Commission observed that:

> Unjustified consumer injury is the primary focus of the FTC Act * * *. By itself it can be sufficient to warrant a finding of unfairness.
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> * * * The independent nature of the consumer injury criterion does not mean that every consumer injury is legally "unfair," however. To justify a finding of unfairness the injury must satisfy three tests. It must be substantial; it must not be outweighed by any countervailing benefits to consumers or competition that the practice produces; and it must be an injury that consumers themselves could not reasonably have avoided.[65]

Earlier articulations of the consumer unfairness doctrine have also focused on whether "public policy" condemned the practice in question.[66] In its December, 1980 statement, the Commission stated that it relies on public policy to help it assess whether a particular form of conduct does in fact tend to harm consumers.

2. *The Unavailability of Price Information.*—a. *Price Advertising.* The organized funeral industry has historically opposed price advertising; indeed, the first NFDA code of ethics adopted in 1884 included a provision which prohibited newspaper advertising.[67] Moreover, state legislatures were encouraged by the industry to enact statutes or regulations prohibiting price advertising.[68] The National Funeral Directors Association (NFDA) and its state affiliates condemned price advertising in their codes of ethics. Two of the reasons cited for the prohibition were explained by NFDA's Executive Director in 1964:

> * * * Said funeral director advertising does not create new markets or expand old ones. It does not lower the cost of the "unit" to the public. At best, it shifts the market or helps firms maintain their portion thereof. NFDA has more than one member in most communities. How can it comply with the objectives of its constitution and "safeguard the common interests of its members" by fostering competitive weapons?
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> * * * * *
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> Price ads put the emphasis on price disregarding the most important values and inner meaning of the funeral and the funeral director's role in American Society.[69]

Historically, funeral providers have not engaged in price advertising. This tradition has continued despite the elimination of most formal restraints. In 1968, the NFDA settled an antitrust suit brought by the Department of Justice and agreed to refrain from enforcing provisions against advertising in its own code of ethics and discontinuing its affiliation with state associations that had similar restrictions in their own codes.[70] Most states have eliminated legal prohibitions on price advertising of funerals. Moreover, to the extent that any such laws totally ban truthful advertising they are clearly violative of the first amendment.[71]

Nonetheless, there remains strong sentiment throughout the industry against price advertising. The opposition to price advertising expressed by many industry leaders during the rulemaking hearings suggests that considerable peer pressure exists to discourage price advertising.[72] Even in the absence of

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[62] *See* text and accompanying note 58, *supra*.

[63] *See* Letter to the Commission, from the Honorable Wendell H. Ford and the Honorable John C. Danforth, Consumer Subcomm., Senate Comm. on Commerce, Science, and Transportation (June 13, 1980).

[64] *See* Letter from the Commission, to the Honorable Wendell H. Ford and the Honorable John C. Danforth (Dec. 17, 1980) (hereinafter cited as "Commission Unfairness Statement"). *See also Horizon Corporation*, 97 F.T.C. 464 (1981).

[65] *See* Commission Unfairness Statement, *id.*

[66] *See generally* FTC v. R. F. Keppel Bros., 291 U.S. 304, 313 (1934); Statement of Basis and Purpose, Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking, 29 *Fed. Reg.* 8324, 8355 (1964) [hereinafter cited as Cigarette Rule SBP]; All State Industries of N.C., Inc., 75 FTC 465, 491 (1969); FTC v. Sperry & Hutchinson Co., 405 U.S. 233, 244–45 n. 5 (1972) (citing Cigarette Rule SBP). Statement of Basis and Purpose, Preservation of Consumers' Claims and Defenses, 40 *Fed. Reg.* 53506, 53522 (1975); Spiegel, Inc., 86 FTC 425, 443 (1975), *aff'd in part*, 540 F.2d 287 (7th Cir. 1976); Statement of Basis and Purpose, Advertising of Ophthalmic Goods and Services, 43 *Fed. Reg.* 23992, 24000 (1978) [hereinafter cited as "Eyeglasses I SBP"].

[67] *See* The History of American Funeral Directing, *supra* note 38, at 475–76.

[68] As recently as 1978, two states still had absolute prohibitions on price advertising, and four more had burdensome restrictions on it. *See* 1978 Staff Report, *supra* note 9, at 429, nn. 88–89.

[69] *See Antitrust and Monopoly Subcomm. Hearings*, *supra* note 1, at 244–46. Such ethical proscriptions of price advertising have been found in other contexts to violate the FTC Act. *See, e.g.*, Eyeglasses I SBP, *supra* note 66.

[70] United States v. National Funeral Directors Ass'n, 1968 Trade Reg. Rep. (CCH) 72,529 (E.D. Wis. 1968).

[71] *See* Bates v. State Bar of Arizona, 433 U.S. 350 (1977).

[72] *See, e.g.*, S. Waring, Treasurer, NFDA, Massachusetts funeral director, Tx 671–672; A. Hornberg, President, Funeral Directors Services Ass'n of Greater Chicago, Tx 4827; J. Curran, Pres., New York FDA, Tx 121; N. Greene, member, Virginia Board of Funeral Directors and Embalmers, Tx 14,184; C Swartz, District Governor of Pennsylvania FDA, Tx 13,954; J. Couch, Illinois State Board of Examiners, Tx 2928; R. Ebeling, former

formal restraints, the rulemaking record indicates only a small amount of price advertising in a few areas of the country.[73]

b. *Failure to Disclose Prices for Individual Items.* Most consumers do not have information on costs when they go to the funeral home to make arrangements.[74] Even at the funeral home, however, many consumers do not receive detailed price information because of the pricing methods which prevail in the industry.

Statistics from funeral trade associations demonstrate that over half of all funeral providers use some form of package or lump-sum pricing.[75] Two variations of packaging are "unit" pricing, in which a consumer is quoted a single price for a complete package of goods and services, and "bi-unit" pricing, in which the casket is priced separately from the other goods and services. Under the unit pricing system, the funeral provider quotes a single price for a package of services, merchandise and facilities which he or she has pre-selected for the consumer. Thus, a $1200 funeral may include transporting the remains, embalming and other preparation, a casket, use of the funeral home facilities for one day of viewing, a ceremony, use of automotive equipment, the services of the funeral director, a guest book and acknowledgment cards. The key feature of the unit pricing scheme is that all of these goods and services are part of a pre-selected package for which there is a fixed price; none of the components is priced separately. The bi-unit method is similar, except that the cost of the casket is separate. Where either method is used, it is usually impossible for consumers to learn the cost of any of the individual components of the funeral package and to select individual items after considering their relative costs.

Under either form of package pricing, a significant number of funeral directors will not reduce the package price if any services or merchandise are unwanted or unused.[76] While some industry members reduce the price if the buyer does not want a part of the package,[77] even those funeral directors who do give credits upon request usually do not disclose to consumers, prior to making a purchase decision, their option to decline services for a reduction in price.[78]

In addition, surveys indicate that consumers are often unaware of the range of goods which are theoretically available. For example, a number of surveys on the rulemaking record show that funeral directors do not display their least expensive caskets in the same selection room as their higher priced units.[79] The evidence also shows that when such merchandise is not displayed, consumers usually are unaware that it is available and usually do not ask about it.[80]

Further, while some funeral providers do quote prices on a more detailed basis,[81] many of them supply such information only after the purchasing decisions have been made, in the form of an itemized agreement or bill.[82] In

managing editor of Mortuary Management, Tx 6860; L. Peake, past Pres., Oregon FDA, Tx 5705; A. Mamary, Pres., Pennsylvania FDA, Tx 12, 883.

[73] *See* 1978 Staff Report, *supra* note 9, at 98, 412–413.

[74] Due to the absence of price advertising and the lack of previous experience, most consumers do not have prior knowledge about the prices charged either by particular funeral homes or by funeral homes generally. (*See* discussion in Section I(E), *supra*.) For example, one survey showed that consumers' estimates of the price for a standard adult funeral ranged from $300 to $10,000. Maryland Citizens Consumer Council, D.C. Ex. 36, at 3. These findings are confirmed by industry studies. *See, e.g.*, Blackwell & Talarzyk, *American Attitudes Toward Death and Funerals* 34 (1974), VI–D–17 [hereinafter cited as "Blackwell & Talarzyk"].

Further, most consumers do not get specific price information before choosing a funeral home. In some instances, consumers felt that time constraints prevented them from getting comparative price information. See note 60, *supra*. In other instances, consumers attempted to get price information by telephone, but had difficulty in doing so, as discussed in section II(A)(2)(c), *infra*. But in most instances, consumers simply do not try to get price information. Instead, they choose a funeral home on the basis of factors other than price. Some of the more important factors are location and convenience, general reputation, ethnic or religious affiliation, knowing the funeral director personally, and recommendations of friends. Blackwell Survey, *supra* note 59. The same study showed that a majority (55%) of consumers already know which funeral home they would call in the event of a death.

Finally, in other instances, price information is irrelevant in choosing a funeral home, as in the case where there is only one funeral director in the community.

[75] 1976 Statistical Abstract, *supra* note 31, at 64–94 (approximately 65% are priced on a unit or bi-unit basis). *See also* Statement of R. Cohen, Exec. Secretary, CAFMS, D.C. Ex. 39, at 22 (hereinafter cited as "Cohen Statement") (1968 figures compiled by Batesville Casket Co. indicate that 84% of firms use unit pricing and 9% use bi-unit); R. Bishop, Director, Florida Consumer Services, Atl. Stmt., App. A, at 4 (Florida survey in 1974 found that 52% of funeral directors use unit or bi-unit pricing).

The widespread use of package pricing is partly explained by the industry's belief that it is simpler for consumers to use, that it is easier for funeral directors to use in determining prices, and that it enables funeral directors to make full traditional funerals available at a lower price. These asserted benefits are discussed in detail in the text, *infra*, II(A)(3)(d).

[76] *See, e.g.*, California Funeral Director Association, L.A. Ex. 23 (survey of 291 funeral directors revealed that 15 percent do not deduct the embalming charge when the service is declined); A. Nix, Pennsylvania funeral director, Tx 12,922; W. Holman, Oregon funeral director, Tx 12,161; R. Lackey, Pres., Alabama chain of funeral homes, II–A–146, at 4. Surveys confirmed that no credit is given for declined services. L. Speer, Director, CalCAG, Tx 7693; C. Skeels, CAMP Consumer Action Project, Tx 6020 (6 of 10 funeral homes make no price reduction); State of Arkansas Office of the Attorney General, Funeral Survey, VI–D–12, at 4–5 (32 of 104 respondents would not make price reductions for declined services); Delaware Div. of Consumer Affairs, Press Release, VI–D–9 (small deductions are given but do not reflect savings to funeral director). Chosen Statement, *supra* note 75, at 25 (20 out of 101 respondents reported paying for services, merchandise or facilities they didn't want). *See also* Blackwell Survey, *supra* note 59 (3.7% of the consumers surveyed were required to pay for services which they did not want).

[77] *See, e.g.*, State of Arkansas Office of the Attorney General, Funeral Survey, VI–D–12, at 4–5 (72 out of 104 firms provide discounts for unused items); Delaware Div. of Consumer Affairs, Survey of the Funeral Industry in Delaware, VI–D–9, at 2 (15 out of 25 firms allow price adjustments for declined items); H. Coates, State Bd. of Embalmers and Funeral Directors of Kentucky, Tx 3983–84; N. Heard, Pennsylvania funeral director, Tx 13,181; J. Kerr, Sec'y-Treas., Kentucky FDA, Tx 3024; R. Coats, Pres., Michigan FDA, Tx 3771; F. Walterman, Pres., Indiana FDA, Tx 5006; N. Greene, owner of Virginia funeral home, Tx 14,188; J. Altmeyer, West Virginia funeral director, Tx 11,775; B. Hirsch, Pennsylvania funeral director, Tx 12,538; A. Leak, Illinois funeral director, Tx 3875.

[78] While NFDA and NSM apparently recognized the right of the consumer to get a credit for an unwanted item, they do not suggest that such credits be disclosed affirmatively and in advance. *See* T. Clark, General Counsel, NFDA, VI–C–6, at 6; NSM Code of Ethics, D.C. Ex. 20. The proposed Guides submitted to the Commission by the major trade associations in 1980 were similarly vague on the funeral director's obligation to disclose all available credits in advance of any purchase decision.

Several funeral directors testified that they will reduce the price for unwanted items if asked, but that they do not inform consumers of this option. *See, e.g.*, N. Greene, Virginia funeral director, Tx 14,188; E. Fitzgerald, New Mexico funeral director, Tx 6246; R. Ninker, Executive-Director, Illinois FDA, Tx 2687–88; B. Hirsch, Pennsylvania funeral director, Tx 12,533; H. Burton, Pres., consultant in before-need memorial estate planning, Tx 6680; R. Johnson, Indiana funeral director, Tx 12,652.

[79] *See, e.g.*, Comments of Maine PIRG, II–C–1400, at 2 (one-third of 116 funeral homes failed to display least expensive casket); FTC Survey of Funeral Prices in the District of Columba, VI–D–4, at 16 (14 out of 36 funeral homes did not display least expensive casket).

[80] *See* New York PIRG, Ex. 1 (N.Y.), at 8 (out of 127 respondents, only 28 realized there might be caskets other than those displayed; only 7 of the 28 asked if anything less expensive was available).

[81] A 1976 study of funeral homes indicates that 26% of 151,943 funerals included in the results involved a multiunit form of pricing and 7% of the funerals were priced on a triunit basis. *See* 1976 Statistical Abstract, *supra*, note 31, at 64, 74, 84, 94.

[82] The regulations of several states which require itemization specify only that itemized price information be given "at the time of arrangements." These regulations do not specifically direct that consumers be given itemized price information before they decide what to buy. *See, e.g.*, New Jersey State Board of Mortuary Science, Rule 76(a): "Any person engaged in the practice of mortuary science shall, *at the time funeral arrangements are made*, compile a specific itemization of the charges which will be made for such arrangements." (emphasis added); New York State Department of Health, Rule 78.1(a): "Every person licensed pursuant to article 34 * * * shall furnish *at the time funeral arrangements are made* for the care and disposition of the body of a deceased person * * *

such cases, the consumer agrees to buy each item, but is still not given the prices associated with each item at the time he or she must decide whether or not to buy it.

(c) *Failure to Disclose Prices Over the Telephone.* The time constraints in arranging a funeral after a death has occurred make it difficult for consumers to get price information before choosing a funeral home. The initial call to a funeral provider to pick up the body of the deceased from the place of death necessarily must occur within several hours of death. Thus, in many instances, at least where death has not been anticipated, all efforts to get price information must occur in an extremely short time span.

Under these circumstances, the gathering of price information by telephone may often constitute the only practical way in which price information can be obtained before a funeral provider is selected.[83] The record reveals, however, that funeral providers often fail to provide price information over the telephone when asked. Individual consumers and consumer groups complained about difficulties they had experienced when they called a funeral home and asked about costs.[84] Consumer groups and state officials in numerous states reported substantial resistance or flat refusals when they attempted to gather price data by telephone for survey purposes.[85]

After the record was closed in this proceeding, data became available which suggested that only a small percentage of funeral directors refuse to answer requests for price information over the telephone.[86] The data seemed to suggest either that the findings of the studies contained in the record were in error, or that funeral directors had substantially changed their practices.[87] After a thorough review of the data, and a presentation of differing staff opinions, the Commission decided not to reopen the record to include the data.[88] The data were not sufficiently reliable to require the Commission to reopen the record at this stage of the proceeding.[89] Further, the data confirmed that some funeral directors refuse to provide price information over the telephone on request.[90] Perhaps more importantly, the data confirmed the basic finding that the vast majority of consumers do not get price information over the telephone before choosing a funeral home.[91] One of the major purposes of the rule is to signal to those consumers who did not think to ask or were inhibited from asking, that price information is available at this critical moment of decision. That disclosure, and the requirement that price information be given, is part of the remedial scheme which the Commission has chosen to

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an itemized list of the services and merchandise to be furnished." (emphasis added); Virginia Board of Funeral Directors and Embalmers, Article XVII, Paragraph 3.A: "Every funeral service licensee * * * shall furnish to the party contracting for such funeral arrangements, *at the time such arrangements are made* if such party be present * * * a written itemized statement of any and all charges." (emphasis added).

[83] Of course, many consumers do not try to get price information by telephone prior to choosing a funeral home. *See* discussion at note 74, *supra*. And it is reasonable to believe that funeral directors who refuse to provide price information when asked, as discussed in text and accompanying notes 84–85, are not likely to volunteer this information.

[84] *See, e.g.*, L. Pratt, Washington consumer, II–B–1153; J. Pagdin, Florida consumer, II–B–1534, S. Flanders, Illinois consumer, Tx 4668; E. Sheehan, District of Columbia consumer, Tx 14,666–67; L. MacDonald, NRTA/AARP, Tx 2647. Also, several memorial society representatives cited consumer experiences of unsuccessful attempts to obtain information by the telephone. E. Knapp, Pres., Memorial Society of Metropolitan Washington, II–C–909; L. Tolliver, Pres., Blackhawk Memorial Society, X–1–82.

A number of funeral directors and industry leaders testified that the reason funeral directors could not give information over the telephone was that such information would be confusing, misleading, and deceptive. *See, e.g.*, C. Lightner, former Pres., NFDMA, Tx 10,391; H. Mayes, Oklahoma Funeral Directors Association, Tx 8895; A. Leak, Ill. funeral director. *See also* NFDA Post-Record Comment, XIV–848, at 9.

[85] *See, e.g.*, D. Hoskins, Chairman, Pennsyvania Ass'n of Funeral and Memorial Societies, Tx 13,988; L. Speer, Director, California CAG, Tx 7,717–18; R. Nesoff, Director of Investigation, State Temporary Comm'n on Living Costs and the Economy, Tx 329 (investigator posed as consumer calling for price information but funeral homes refused); M. Edelstein, attorney, New York City Dep't of Consumer Affairs, Tx 163 (three of twelve mortuaries called would not provide price information); R. Pooler, Executive Director, New York State Consumer Protection Bd., Tx 38 (found price information is rarely given on the telephone); NYPIRG Ex. 1 (N.Y.), at 2 (testimony of B. Kronman, research associate) (two-thirds of sixty funeral homes called refused or were uncooperative when asked for price information); Indiana PIRG Reports, A Death in the Family, VI–D–8 at 1; Maine PIRG, II–C–1400, at 4; O. Matthews, Maryland Citizens Consumer Council, Tx 14,053; S. Chenoweth, Director, Minnesota Office of Consumer Services, Tx 3123–24; J. Brown, Assoc. Director, Center for Consumer Affairs of the University of Wisconsin Extension, Tx 4306–07.

One possible factor influencing the funeral directors' response is the advice given by NFDA's General Counsel to its state affiliates that funeral directors not cooperate with any price surveys during the pendency of the Commission's rulemaking proceeding. NYPIRG Ex. 3 (N.Y.). While this advice apparently affected returns on written price surveys, *see* Staff Report, *supra* note 9, at 342–344, its effect on telephone price requests is clear because it would not necessarily be apparent to the funeral director that the questions were part of a price survey.

[86] In 1979, the staff, as part of an on-going program intended to measure the impact of trade regulation rules, began work on an impact evaluation baseline study ("BLS"). The BLS was not intended to be part of the rulemaking record, but was rather intended to gather pre-rule data which could be used as a basis for comparison with a future study to be conducted after the rule had gone into effect. The study was a survey of a national mail panel of consumers, asking for information about funerals that they had arranged in the last year. The data instrument was designed by Market Facts, an independent consultant, along with Commission staff, and information was collected by Market Facts. Due to various delays in the final promulgation, the data from the BLS became available shortly before the Commission's final consideration of the rule. The BLS, and all staff memoranda regarding its findings, were made available to the public but were not made part of the rulemaking record.

[87] The BLS suggested that only 6 percent of the requests for price information over the telephone were rejected.

[88] At its public meeting on July 28, 1982, the Commission heard presentations and considered five memoranda from different staff members, all of which presented different positions. Some staff felt that the record did not need to be reopened because the data were unreliable and did not contradict the record. Other staff felt that the data were reliable and called into question findings of the rulemaking record. All of these staff memos were made available to the public.

[89] The specific questions in the questionnaire were ambiguous, and it was impossible to determine whether all the respondents understood the questions and responded in the same way. A subsequent validation study, for example, showed significant variations with the results found in the original baseline survey, suggesting confusion on the part of respondents. The Commission agreed with the staff analysis that it was impossible to draw any firm conclusions from the study. Indeed, the very breadth of staff opinion on the reliability of the data strongly suggested that the questions of ambiguity and meaning could not be satisfactorily answered by further public comment.

Generally, the Commission is not required to consider relevant evidence that may be generated after the close of the rulemaking record, for the reason that administrative proceedings would otherwise never end. Vermont Yankee Nuclear Power Corp. v. NRD, 435 U.S. 519, 554–555 (1978) (quoting ICC v. New Jersey, 322 U.S. 503, 514 (1944)). The Commission is required to reopen the record for new evidence only when there has been a change in circumstances that is "not merely 'material' but rises to the level of a change in the 'core' circumstances, the kind of change that goes to the very heart of the case." American Optometric Association v. FTC, 626 F. 2d 896, 907 (D.C. Cir. 1980), (quoting Greater Boston Television Corp. v. FCC, 463 F.2d 268, 283 (D.C. Cir. 1971), *cert. denied*, 406 U.S. 950 (1972)).

The data above, in the Commission's consideration, does not challenge the findings of the record because it lacks the requisite certainty needed to rebut the record. While relevant, the serious questions about its reliability render the data less material than otherwise would be the case.

[90] The BLS suggested that a minimum of 6% of funeral directors refused to answer requests for price information. While that finding was a lower figure than that found in the record, the record also showed that a significant number of funeral directors did provide price information on request. *See, e.g.*, NYPIRG, Ex. 1 (N.Y.) (⅓ of sixty funeral homes gave price information).

[91] The data indicated that at the very most, some 35% of those telephoning either asked or were offered price information of some sort over the telephone. (Out of 377 persons who telephoned a funeral home, 72 asked for information on arrangements and prices, while 61 had this information offered to them by the funeral director.)

induce greater price competition and consumer choice in this marketplace.

3. *Consumer Injury Due to Inadequate Price Information.* The failure of funeral providers to furnish basic price information results in substantial economic injury to funeral purchasers. This economic injury takes two related forms: consumers purchase items that they may not want or use, and they pay higher than competitive prices for items they purchase.

(a) *Paying for Unwanted Items.* Package pricing leads consumers to buy items they may not want or use in several ways. As noted above, many funeral directors do not reduce the price of a package even when a consumer asks to have items dropped from the package. By bundling all of the pre-selected goods and services together, the funeral provider is effectively forcing the consumer to buy items as a condition of providing a necessity that only he can provide: disposition. This injury, however, stems less from the lack of price disclosure than from the funeral director's refusal to unbundle the package. Consequently, it is discussed in more detail in Section II(C), *infra*.

Even when funeral directors are willing to unbundle the package upon request, package pricing still causes consumer injury because it denies consumer choice. When a funeral director is willing to give a reduction in price for unwanted goods included in the package, quoting a single price for the full package obscures the fact that the package actually consists of components which may be individually chosen. Further, by the funeral provider's failing to disclose that unwanted components may be declined, consumers are simply likely to assume that the package is not subject to negotiation because all items are necessary or required.[92] Given the funeral purchaser's lack of prior experience and knowledge, and the emotional and time pressures attending the decision, the Commission believes that many funeral purchasers will simply not think to ask whether the package can be broken into parts or to question aggressively the funeral director's offerings.[93] Consequently, consumers are injured in the absence of a disclosure that parts are declinable because they are likely to assume that there are no choices to be made. As a result, they buy the pakages, including items that they would not have bought had they been given information that purchasing the components was optional. In addition, denying consumers information on the *prices* of the parts further injures consumers because they have no idea how much can be saved by declining the components. Lacking such price information, consumers cannot make an informed purchase decision.

Direct evidence of the extent of this injury, through consumer complaint surveys, is difficult to obtain precisely because consumers are often not aware that they had any choice to make.[94] Further, any systematic observation of consumer behavior related to pre-sale itemized disclosures has not been possible, primarily because so few funeral homes provide such information.[95]

Nevertheless, the record establishes significant consumer injury. Some indication of the extent of the injury can be ascertained from attitudinal studies and other surveys, and comments and testimony from individual consumers, consumer groups and experts indicating that, given price and option information, a significant number of consumers would use such information to make informed choices and would often choose to decline items usually included in the package funeral.[96]

A number of consumer surveys show that consumers find cost to be highly important in making funeral arrangements.[97] It is not surprising, then, that large majorities of consumers want detailed price information about funerals [98] and want funeral prices to be quoted on an itemized basis.[99] Consumers believe that such detailed price information will be useful to them in making funeral arrangements.[100]

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[92] J. Todd, Arkansas Funeral Director, Tx 8753; "Why must a package funeral be bought if you only want to be cremated immediately?" E. Given, Michigan consumer, II–B–150. In addition, since many consumers are ignorant of the laws and cemetery requirements applicable to funeral arrangements, they are likely not to question the inclusion of certain items in a package. For example, according to one study, 51% of the consumers surveyed believed embalming was required by law. The Central Area Motivation Program, Consumer Action Project Survey, Sea. Ex. 14 (hereinafter cited as "CAMP Survey"). It can be inferred from this that many of these consumers would, therefore, not think to question the inclusion of embalming in a funeral package.

[93] *See generally* Section I(E), *supra;* Dr. J. Quint Benoliel, Professor, Univ. of Washingon School of Nursing, Tx. 5297, citing I. Glick, R. Weiss, & C. Parkes, *The First Year of Bereavement* (1975). A study of the funeral industry in Minnesota revealed that only consumers who aggressively questioned funeral directors about the availability of limited services were likely to be informed of all the available options. S. Chenoweth, Director, Minn. Office of Consumer Services, Tx. 3116.

[94] Nevertheless, a number of consumers recite instances in which they were aware that they were being required to pay for goods or services (such as limousines, visitation rooms, and use of the chapel) that were either not wanted or not used. *See e.g.,* Comments in category II–B at 54, 164, 366, 496, 829, 1048, 1108, 1266, 1404, 1486, 1893, 1967, 1984, 2003, 2013, 2034, 2240, 5967, and testimony, S. Ross, Washington consumer, Tx 5274–75.

[95] At the time the hearings were conducted, only four states had enacted laws or regulations requiring mandatory price itemization. *See* 1978 Staff Report, *supra* note 9, at 357, n. 77. (Three other states required itemization to be given only on request, and one other state required only a limited breakdown on the package price.) But even in these four states, the funeral director was not required to give consumers the price disclosures *before* the decisions were made, but only a written record of what had been agreed to. As a consequence, no state had a regulatory price disclosure scheme similar to the FTC's proposed rule.

Since that time, a number of states and localities have passed regulations which are more similar to the FTC's proposed rule and which might be suitable for comparative studies. While such studies might be helpful, the Commission believes that the additional time and expense which would be required to conduct such studies and reopen the rulemaking record is not justified and would not add substantially to the record. The Commission is not required to reopen the record to consider relevant evidence which has become available after the record has closed, ICC v. New Jersey, 322 U.S. 503, 514, (1944), unless the evidence suggests a "change of circumstances" going "to the very heart of the case." American Optometric Association v. FTC, 626 F.2d 896, 907 (D.C. Cir. 1980).

Comments submitted by interested parties in 1979 and 1981 offered parties an opportunity to bring to the Commission's attention any such fundamental change since the hearings conducted in 1976. Comments submitted at that time indicated that no significant changes had taken place.

[96] Many consumers, of course, want the package funeral and are not interested in the prices of the parts of the package. Such consumers are not injured by the funeral director's failure to disclose that components of the package are optional and the price of those components, but only because their wants happen to coincide with the funeral director's offering.

[97] *See, e.g.,* Blum Study, *supra* note 57; CAMP Survey, *supra* note 92.

[98] *See, e.g.,* CAFMS Survey which found that a large majority of consumers surveyed supported required price disclosures. CAFMS Survey, *supra* note 60, at A–7 (Form A, Question 22). A survey of over 1000 consumers sponsored by the Casket Manufacturers Ass'n revealed that two-thirds of consumers responding indicated a preference for detailed funeral price quotation. Blackwell and Talarzyk, *supra* note 74, at 34. While these and other surveys on the record have methodological limitations which prevent projection to the national population, these surveys, combined with others and the extensive written comments and oral testimony, show that consumers typically desire more information.

The desire for more detailed price information also was expressed by a great many individual consumers during the rulemaking proceeding. *See, e.g.,* Comments, in category II–B at 97, 240, 305, 529, 541, 597, 706, 726, 738, 780, 798, 916, 1191, 1316, 1562, 1565, 1571, 1589, 1599, 1823, 1834, 1850, 2042 and 2080; and Testimony, *see, e.g.,* W. London, American Legion, Tx 3465.

[99] *See, e.g.,* Blackwell and Talarzyk, *supra* note 74, at 34–35 (CMA survey revealed that two-thirds of respondents preferred pricing quotation that provides some detail on individual components and over one-half of respondents expressed preference for itemization); Blum Study, *supra,* note 57 (survey of South Florida residents indicated that over 90% of respondents favored regulation requiring a funeral director to provide specific information about the price of each item of service and merchandise); Cohen Statement, D.C. Ex. 39, *supra* note 75 (94% of consumers surveyed desired funeral prices to be quoted on an itemized basis).

[100] *See* Blum Study, *supra* note 57; CAMP Survey, *supra* note 92; Humphreys, D.C. Ex. 45.

Evidence shows that, if given the choice, consumers would not buy various parts of the "average" package funeral ranging from rates of 10 percent (for embalming) to 43 percent (for the use of another family car).[101] Many industry leaders expressly opposed itemization at least in part for the fear that consumers, if given the choice, would not buy items usually included in the package.[102]

The aggregate injury caused by consumers purchasing items that they do not want and would not buy if not required to do so, or if they had itemized pre-sale price information, is substantial. Evidence on the record shows that various optional items included in the funeral package are expensive: for example embalming ($50–$150),[103] and limousines ($15–$75).[104]

(b) *Paying Supracompetitive Prices.* The second source of consumer injury is that the lack of adequate price information may be causing consumers to pay higher than competitive prices for funerals.

Information from a variety of sources has led the Commission to conclude that this economic injury exists. Included in these sources are economic studies of the funeral market, which suggest the existence of consumer injury, because of "a striking absence of price competition in the funeral industry." [105] Industry members have also admitted that funeral directors do not compete on the basis of price at the point of sale.[106] Economic analyses on the record have concluded that price competition in the funeral market is severely inhibited because consumers do not have adequate access to price information.[107] Without the pressure of active price competition, prices for funeral services can be set higher than a competitive equilibrium price.[108]

Information plays an important role in the operation of an efficient market. In particular, the significance of price information to a competitive market is well-documented in the economic literature.[109] Consumer ignorance about prices will permit sellers to charge higher than competitive prices, even in a market with numerous sellers.[110] The reason for this result is that sellers will gain few customers by lowering prices if consumers have difficulty obtaining price information. Inadequate price information, therefore, serves to give even a large number of small sellers a degree of market power. These theoretical observations have been confirmed by a number of empirical studies in other markets.[111]

Exactly why the market has failed to generate price information is impossible to say with certainty. Evidence in the record suggests that some of the unique structural and demand characteristics of this industry may provide some explanations.

First, there is the tradition of restraints on price advertising noted above.[112] Although formal restrictions against price advertising have generally been eliminated, many industry leaders and members continue to view price advertising as unprofessional. Thus, industry custom and substantial peer pressure serve to inhibit competition by advertising.

The second factor which may operate to distort normal market incentives is the nature of demand in the industry. Total demand for disposition is a function of the death rate. Economists studying the funeral industry point out that total demand for disposition in all forms is extremely inelastic, i.e., the number of funerals is not responsive to changes in price.[113] The demand for the services of any individual funeral home or for particular forms of disposition, however, may be price-elastic, thereby giving each firm an incentive to lower prices to increase sales. Lower prices and aggressive marketing, however, will not expand the number of consumers in the market; a funeral home can increase the number of funerals it performs only by taking business away from its competitors. Since competing firms are likely to respond with lower prices, the result is that prices are reduced and sales do not increase, thereby reducing total revenues. The funeral home is better off, therefore, avoiding price competition. One economic analysis of the funeral industry concluded that "the funeral director's awareness of the effects of price competition in this demand-inelastic industry" is a major reason for the lack of price advertising.[114] This finding can be contrasted with the experience in professional markets where advertising has flourished after the removal of formal price advertising restraints. For example, studies in the optical market, where perhaps the most professional advertising has occurred, show that demand is price-elastic.[115]

In addition to these two factors which blunt funeral providers' incentives to provide price information, certain aspects of the market make it difficult for new firms to enter and compete. The evidence suggests that a variety of nonprice factors influence a consumer's choice of funeral provider, such as family tradition, religious or ethnic affiliation, and reputation of the firm.[116] These consumer preferences give established firms in the market a distinct advantage over potential entrants. In an industry with a large number of small sellers and significant consumer loyalty, the prospects for attracting a large enough clientele may appear uncertain at best. As a result,

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[101] Blackwell Survey, *supra* note 59.

[102] *See, e.g.*, H. Coates, member, State Bd. of Embalmers and Funeral Directors of Kentucky, Tx 3981; C. Nichols, Director, Nat'l Foundation of Funeral Service, X–24, at 5–6.

[103] *See* text and accompanying note 349, *infra*.

[104] *See* M. Lennon, Tennessee consumer, II–B–3346; FTC Survey of Funeral Prices in the District of Columbia, IV–D–3, at 27 (1973).

[105] Blackwell article, *supra* note 34, at 78.

[106] D. Rollings, Executive Director, OGR, XIX, at 80 (1981 oral arguments).

[107] *See, e.g.*, A. Rappaport, An Analysis of Funeral Service Pricing and Quotation Methods (1971), III–I–2, at 4–5 (hereinafter cited as "Rappaport").

[108] Some commentators see evidence of supracompetitive prices in the excess capacity of the industry. *See, e.g.*, Blackwell article, *supra* note 34, at 82; Rappaport, *supra* note 107; Kissel, *supra* note 35.

[109] *See, e.g.*, Scitorsky, *Ignorance as a Source of Oligopoly Power*, 40 Am. Econ. Rev. 48 (1950); Stigler, *The Economics of Information*, 69 J. of Political Economy 213 (1961); Salop, *Information and Monopolistic Competition*, 66 Amer. Econ. Rev. 240 (1976).

[110] *See, e.g.*, Salop, *Information and Monopolistic Competition*, 66 Am. Econ. Rev. 240 (1976); Grossman and Stiglitz, *Information and Competitive Price Systems*. 66 Am. Econ. Rev. 246 (1976).

[111] *See, e.g.*, J. Begun, "Professionalism and the Public Interest: Price and Quality in Optometry" (Ph. D. dissertation, University of North Carolina, June, 1977); Bureau of Economics, Federal Trade Commission, Economic Report—Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry (Sept. 1980); J. Cady, *Restricted Advertising and Competition: The Case of Retail Drugs*, (American Enterprise Institute for Public Policy Research, Center for Research on Advertising, Domestic Affairs Study 44, 1976); Benham, *The Effect of Advertising on the Price of Eyeglasses*, 15 J.L. & Econ. 337 (1972); Benham and Benham, *Regulating Through the Professions: A Perspective on Information Control*, 18 J.L. & Econ. 421 (1975) (hereinafter cited as "Regulating Through the Professions").

[112] *See* Part II(A)(2)(a), *supra*.

[113] *See, e.g.*, Kissel, *supra* note 35, at 23.

[114] *Id.* at 41. The ability of funeral directors to enforce an informal understanding not to compete on the basis of price is made easier by the fact that most funeral homes have very limited competition. Nearly 70% of all funeral homes have fewer than 4 competitors. V. Pine, Findings of the Professional Census (1971), D.C. Ex. 4.

[115] *See* Regulating Through the Professions, *supra* note 111, at 436–440. *See also* FTC Staff Report on Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry 31 (1980).

[116] Various consumer surveys on the record examined this issue. *See, e.g.* N.Y. Ex. 1(I) (N.Y.); Kalish Survey, *supra* note 56, at Table 8; "Funeral Services Attitudinal Survey," D.C. Ex. 29 (Odesky) at Question 3; G. Refsland Prof. of Sociology, Montana State Univ., D.C. Stmt. at 4. Funeral industry spokesmen also have pointed to the relatively low priority of price as a factor in selecting funeral homes. *See e.g.*, R. Blackwell, Tx 13,707.

entry by low-cost providers is discouraged.[117]

(c) *Injury is Unavoidable.* The consumer injury caused by the lack of adequate price information—paying for items which consumers may not want, and paying for funerals at supracompetitive prices—are harms which are not reasonably avoidable. A consumer can only avoid paying for items in a package he does not want if he or she is knowledgeable enough to ask whether they are optional. In the funeral transaction, it is not reasonable to put that burden on the funeral consumer, who typically lacks prior experience and prior knowledge about laws and options, and who must decide under circumstances of limited time and emotional strain.

The only way a consumer could avoid such harm would be to compare prices and offerings before choosing the funeral home. Yet, because of time constraints and other factors, most people do not get such information. Further, the record indicates that even where some consumers have tried to get price information over the telephone, they had difficulty in obtaining it.

Finally, it appears that the market forces are insufficient to generate the needed price information. Due to some unique structural and demand characteristics of this market, there appear to be significant obstacles to price competition. Further, the usual market discipline is lacking. In most cases, consumers who have unnecessarily bought items because they lacked sufficient price information will not be dissatisfied because they will not know that such choices were denied. Given these factors, it is unlikely that the market will correct the failure to provide sufficient price information by itself.

(d) *Countervailing Benefits.* In considering whether a practice is unfair, the Commission must determine that there is net injury, *i.e.,* that the injury caused by the practice is not outweighed by countervailing benefits.[118] Many funeral providers and the major trade associations believe that package pricing has important benefits.[119]

One suggested benefit is that package pricing is easier for most consumers to use, since most consumers are interested only in the full traditional funeral and how much the total will cost.[120] Undoubtedly, many consumers will not be interested in declining parts of the traditional funeral package, and those consumers would be interested primarily in the total cost in choosing which funeral package to buy. Itemization, however, does not impose any burdens on such consumers. If consumers are not interested in choosing individual components, they are free simply not to use the price information and to select on the basis of the total cost for all of the components. Further, the rule also allows funeral providers to offer package prices. While itemization thus does not interfere with the ability of those consumers who are interested only in packages to choose the funeral package they want based on the total cost, package pricing, in contrast, precludes consumers who are *not* interested in the full funeral from making informed choices.

Funeral providers also argue that package pricing, as an accounting method, is an easier method to use than itemization for setting prices. Since itemization is a more complex accounting system, funeral directors may be required to seek accounting assistance and to spend more time in tracking costs and in setting prices.[121] These increased costs, it is suggested, will be passed on in the form of higher prices to consumers. The Commission considers the arguments that the rule will increase costs, and thereby raise consumer prices, in detail in Section IV, *infra.* There, the Commission determines that, while the rule will impose some compliance costs, those costs are modest and are outweighed by the benefits of the rule.

By far the most strongly pressed argument in favor of package pricings, however, is the contention that package pricing enables funeral providers to offer funerals at lower prices than they would be required to charge under itemization.[122] The various arguments that itemization will lead to higher prices are discussed in detail in Section V(B). As noted there, the Commission finds that, while itemization provides an opportunity for funeral directors to choose to raise their prices, there is no reason why prices would necessarily be lower under package pricing than under itemization.

The Commission finds that the countervailing benefits of package pricing are not significant. While package pricing is probably a less costly accounting method than itemization, the increased costs caused by switching to itemization, as discussed in detail in Section V(B)(2), *infra,* are modest and outweighed by the far greater benefits expected by increased price competition and greater consumer choice.

(e) *Public Policy.* Finally, as discussed in Section II(A)(1), *supra,* the Commission also looks to established public policy for confirmation (or denial) of its finding that a practice is unfair. While the primary focus of the Commission's decision will usually be a direct analysis of the injury caused by a challenged practice, the decisions of other public bodies addressing similar issues will also be taken into account.

In this case, there is clearly no public policy *against* the disclosure of itemized price information.[123] to the extent that there is any clear public policy at all, as evidenced by recent state laws and legislation, it appears to support the Commission's decision.[124] While this might not be sufficient to rest a finding of unfairness on public policy alone, it provides some support for the Commission's own analysis of the consumer injury.

(f) *The Failure to Disclose Itemized Information is an Unfair Practice.* Based on the above evidence, the Commission concludes that the failure of funeral providers to furnish information on the prices of specific funeral goods and services is an unfair practice in violation of Section 5 of the FTC Act. We find that the practice imposes substantial unjustifiable consumer injury.

(g) *Remedial Requirements.* To remedy the unfair and deceptive failure of funeral providers to furnish information on the price of specific funeral goods and services, § 453.2(b) of the rule requires funeral providers to: (1) Provide price information over the

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[117] The difficulty of building a clientele has been cited as the primary barrier to entry in the funeral industry. *See* Kissel, *supra* note 35, at 23. While all states require licensure for morticians, there is no evidence to suggest that the entry barriers posed by those licensure schemes serve to exclude new entrants.

[118] Commission Unfairness Statement, *supra* note 64.

[119] As noted previously, however, most trade associations recognize that consumers are entitled to a "reasonable adjustment" when they decline items; only a few funeral providers defend the required purchase of all parts of the funeral package as being beneficial. *See, e.g.,* D. Hanks, Missouri funeral director, II–B 5159; I. Fisher, Mass. funeral director III–H–15, (suggesting that package pricing, as an accounting method, does not permit them to deduct charges for unwanted items).

[120] *See, e.g.,* NFDA Post-Record Comment, XIV–848, at 70, 79, 482; NSM Post-Record Comment, XIV–849, at 93, 96.

[121] *See, e.g.,* NFDA Post.-Record Comment, XIV–848, at 488.

[122] *See, e.g.,* NFDA Post-Record Comment, XIV–848, at 488–493; NSM Post-Record Comment, XIV–849, 95–107.

[123] Indeed a policy against disclosure would be hard to reconcile with the general public policy favoring informed consumers and the efficient operation of the free market. See Trade Regulation Rule concerning the Labeling and advertising of Home Insulation, 16 CFR Part 460.

[124] See Fla. Stat. Ann. § 470.035 (West 1979); *see also* note 62, *supra.*

telephone; (2) furnish consumers with a written price list containing prices of the various individual items and services offered; and (3) give purchasers a written statement indentifying the goods and services selected and their individual prices.

The remedies selected by the Commission to cure the lack of price information must bear a "reasonable relationship" to the unfair practice found to exist. In *Jacob Siegel Co.* v. *FTC*, 327 U.S. 608, 613 (1946), the Supreme Court set forth the standard for review of remedial provisions of Commission adjudicative orders: "[T]he courts will not interfere except where the remedy selected has no reasonable relationship to the unlawful practices found to exist." Periodically the Supreme Court has reaffirmed the Commission's remedial discretion and the limited role of the reviewing Court. *FTC* v. *Ruberoid Co.*, 343 U.S. 470, 473 (1952); *FTC* v. *National Lead Co.*, 352 U.S. 419, 428–30 (1956); *FTC* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 392–95 (1965).

In exercising this remedial authority, the Commission has not been limited to proscribing only the precise practices found to exist, but rather has been free to "close all roads to the prohibited goal." *Ruberoid, supra*, 343 U.S. at 473; *Colgate-Palmolive, supra*, 380 U.S. at 395. *Cf. International Salt Co.*, v. *United States*, 332 U.S. 392–400 (1947); National Soc'y of Professional Engineers v. *United States*, 435 U.S. 679, 698 (1978).

The Commission's discretion to formulate an appropriate means of preventing the unfair or deceptive acts or practices found to exist also takes into account the nature of rulemaking, which involves "prediction[s] based upon pure legislative judgment" [125] and "judgmental or predictive" [126] determinations such as those involved in fashioning remedies. In making such determinations, the Commission is "entitled to rely on its judgment, based on experience" [127] as to the appropriate remedy to impose in the rule.

The Commission has designed the remedial requirements in § 453.2(b) to restore consumer choice, enhance the operation of market forces and cure the market failure which has occurred in the funeral industry. In the Commission's judgment, the requirements will achieve this result by giving consumers access to price information at a time and in a form which will permit them to consider price when making purchase decisions. Increasing the ability of consumers to locate funeral services whose mix of price and quality they prefer and to express those preferences in the market gives sellers an incentive to compete.

The itemized price list addresses the failure of a substantial portion of the industry to provide information on the prices of components of a funeral package. It will enable consumers to weigh the costs and benefits both of the various alternatives to a traditional funeral and of the individual items which they might select for use with a traditional funeral. The itemized list also will provide consumers with relatively standardized price information, while still allowing funeral providers to provide any additional price information they wish to. The second disclosure requirement, the telephone price disclosure requirement, addresses directly the record evidence that funeral directors have failed to respond to telephone inquiries about prices. Consumers will thus have the ability to call several funeral homes and compare their offerings before deciding where to purchase. In this manner search costs can be significantly reduced. In many instances, obtaining price information by telephone represents the only practical opportunity for comparison shopping, since many options are foreclosed once the funeral home is closed. The third disclosure requirement, the itemized statement of services selected, is designed to complement the price list by ensuring that consumers are not charged for items they did not select.

The effectiveness of the rule is clearly dependent on the extent to which consumers actually use the information provided to them. This does not mean, however, that all consumers must comparison shop in order for the market to realize the benefits of price competition. Economic theory indicates that consumers who seek and use price information will benefit uninformed consumers.[128] Thus, as long as some consumers comparison shop, the market should respond. The discussion which follows will describe in more detail how the remedial requirements in the rule will assist consumers during selection of a funeral home and while comparing alternative funeral arrangements in the funeral home.

(1) *Operation of Price Lists.* At the funeral home, consumers will receive one or more price lists. The rule itself identifies three separate lists. One is a "general price list", specified by § 453.2(b)(4). The second is a "casket price list", specified by § 453.2(b)(2). The third is an "outer burial container price list," specified by § 453.2(b)(3). However, the rule also permits funeral providers to merge either or both of the latter two lists with the general price list, if this is more convenient and if the information provided is the same.

In any event, consumers would have to be given the general price list for retention upon beginning discussion either of funeral arrangements or of the selection of any funeral goods or funeral services. The list would be present for consultation while the consumers were considering what to purchase. It would show them the prices for 16 basic goods and services which they might wish to use.[129] The general price list would have to be printed or typewritten so that it would be available for retention by consumers.

In addition to the general price list, there would be two other price lists containing information on specific merchandise. The casket price list would show the retail prices of all caskets and alternative containers offered which did not require special ordering. The outer burial container price list would provide similar price information about burial vaults and grave liners. Each of these lists would have to be given to consumers upon beginning discussion of, but in any event before showing the merchandise they list. Unlike the general price list, these lists would not have to be offered to consumers if caskets or outer burial containers happened not to be discussed or shown. Similarly, the lists do not have to be printed or typewritten in a manner which enables them to be given to consumers for retention. Rather, the rule only requires that they be available in the funeral home. Because of this, funeral providers would be free to use alternative formats, such as charts or notebooks.[130]

The principal concern expressed about the operation of these lists was that they would drive up funeral costs because they require funeral directors to itemize prices.[131] For reasons discussed extensively in Part V of this Statement, the Commission has concluded that this would not be the case.

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[125] *Bradford Nat'l Clearing Corp.* v. *SEC*, 590 F. 2d 1085, 1103 (D.C. Cir 1978) (quoting *Industrial Union Dept.* v. *Hodgson*, 499 F. 2d 467, 474 (D.C. Cir. 1974)).

[126] *FCC* v. *National Citizens Comm. for Broadcasting, supra*, 436 U.S. at 813.

[127] *Id.* at 797.

[128] *See, e.g.*, Salop, *Information and Monopolistic Competition*, 66 Amer. Econ. Rev. 240 (1976).

[129] The list might not always be this long. All 16 items have to be listed only if the funeral provider offers them for sale. Moreover, the rule does not prohibit listing other items which the funeral provider might offer for sale in addition to those specified.

[130] If the funeral provider merges these lists with the general price list, the combined list would have to be prepared in a format which consumers could retain.

[131] *See* discussion in Part V(B), *infra*.

Several other concerns were also expressed, however. First, some funeral providers stated that use of an itemized price list would force funeral providers to take more time explaining funeral arrangements and thus substantially lengthen the arrangements conference.[132] Other persons testified, however, that itemized price lists either took no longer to explain or shortened the length of the arrangements conference.[133] To the extent that the time involved in the arrangements conference was lengthened because consumers more carefully review their options and select only those items they desire, such an effect is intended.

A second concern was directed at the casket price list. Some funeral providers suggested that the requirement to have the list reflect all caskets offered would be particularly burdensome in light of the fact that a different casket is sold each time a funeral is arranged.[134] Although the rule does require the casket price list to be kept current, this should not impose a substantial burden. Many funeral providers replace the casket they sell with an identical, comparably priced unit.[135] Whenever this happened, no revision of the casket price list would be necessary. The rule requirement also has been written to minimize the burden which would be imposed on funeral providers when they change their inventory. The casket price list does not have to be prepared as a printed or written list. Instead, it may be displayed in other formats, such as a looseleaf notebook with a page for each casket. If the funeral provider elects to use such a format, revising the list would only require removing one description and replacing it with another. Given this sort of flexibility, the requirement should not be unreasonably burdensome.

A third concern expressed was that the general price lists would be expensive to prepare and duplicate.[136] However, funeral directors who currently provide itemized price information testified that the printed forms do not cost more than a few cents each to obtain.[137] Neither does the evidence suggest that itemization, as an accounting method, is significantly more complicated or substantially more expensive than the methods currently used by many funeral providers.[138]

(2) *Statement of Goods and Services Selected.* In addition to the price lists, persons making funeral arrangements in the funeral home would receive a "Statement of Funeral Goods and Services Selected." The statement, required by § 453.2(b)(5), would be given to people at the conclusion of the arrangements conference. Its purpose is to combine in one place the prices of the individual items the person is considering for purchase, as well as their total price, so that a final decision on whether to add or subtract particular items can be based on a review of the total cost of the arrangements.

To help ensure that the total cost of the funeral is disclosed on the statement, funeral providers are required to show prices of cash advance items, if known, or to give a good faith estimate of their cost if the actual price is unavailable. To simplify the operation of the rule and avoid unnecessary paperwork, § 453.2(b)(5) permits funeral providers to combine the information required for the "statement" on any contract, statement, or other document which they currently provide at the conclusion of the arrangements conference.[139]

(3) *Telephone Price Disclosure.* The rule provision primarily designed to help consumers obtain price information for use in selecting a funeral home is the provision requiring telephone price disclosures.[140] The section imposes two obligations on funeral providers. First, they must affirmatively inform people who call their place of business and ask about the terms, conditions, or prices at which funeral goods or funeral services are offered, that price information is available over the telephone. In other words, the provision requires that funeral providers make an oral disclosure letting persons who call know that they can receive price information over the telephone. This provision is intended to inform the large number of consumers who first contact the funeral home by telephone that price information can be obtained before the selection of the funeral home is made. Many consumers who may be interested in price are not presently getting price information because they do not know enough to ask for it, and funeral providers do not volunteer it. Since options may be foreclosed, even under the rule, once a home is selected, this information will help alert consumers to the importance of price at a time when their choices are still open.

If the person calling is not interested in such information, the funeral provider has no further obligations under § 453.2(b)(1). However, if the caller requests price information, the second requirement of the section is triggered. That requirement is to disclose to persons who make telephone inquiries about the funeral provider's offerings or prices any accurate information from the price lists in § 453.2(b)(2) through (4) which reasonably answers the question and any other information which is readily available. The consumer can use this information to compare the prices of different funeral providers in deciding which one to select.

While the Commission believes that the telephone price disclosure provisions will impose a minimal compliance burden on funeral providers, several concerns about the provisions' operation were expressed during the funeral rule proceedings. One was that the provisions would necessitate the hiring of additional personnel to provide the required information.[141] It was argued that many funeral providers currently staff their phones during off-hours with an answering service or with unlicensed employees who lack detailed information about the provider's offerings and prices. Such a concern apparently is based on the view that the rule would require specific price information to be given by the first person answering the phone. However, this view is not the case. To the extent that a funeral home uses a telephone answering service during non-business hours, that service is not subject to the provisions of the rule. While the rule

[132] *See, e.g.*, A. Anderson, Pres., Utah FDA, Tx 6176. *See also* R. Thompson, Connecticut Funeral Director, Tx. 2023–24.

[133] *See, e.g.*, S. Hausmann, Exec. Director, New Jersey FDA, Tx 537 (he currently discusses itemization form as an integral part of the arrangements conference); C. Kleiber, researcher, Tx 5745 (student researcher who visited several funeral homes found that the itemized price list actually saved time in explaining of charges).

[134] *See, e.g.*, L. Peak, Pres., Oregon FDA, Seattle Stmt. at 5–7; C. Geer, Ohio funeral director, II–A–479, at 1.

[135] *See*, e.g., F. Galante, funeral director, Tx 1749.

[136] *See, e.g.*, NFDA Post-Record Comment, XIV–159, at 476.

[137] *See, e.g.*, F. Walterman, Tx 4985 (after basic charge of $60, forms can be printed for three cents each). P. Farmer, Tx 2354 (purchases itemization forms for twenty five cents each).

[138] *See* discussion in Part V(B), *infra;* 1978 Staff Report, *supra* note 9, at 405–06.

[139] The major concerns raised about the statement—the cost of preparing itemized price information—has been discussed above, in conjunction with the description of how Sections 453.2(b) (2) through (4) (price lists) operate.

[140] Theoretically, consumers also would be able to go to different funeral homes and obtain their price lists, then compare these. However, substantial time constraints and emotional barriers to in-person shopping make it unlikely that consumers will avail themselves of this opportunity. While this provision makes it easier for consumers to obtain price information before choosing a funeral home, many consumers may still continue to choose a funeral home without first searching for price information. *See* discussion of the funeral consumer in Part I(E), *supra.*

[141] *See, e.g.*, Dr. V. Pine, NFDA, statistical consultant, Tx 10,827; W. Chasen, Illinois funeral director, II–A–705, at 3.

does cover funeral providers, their employees and agents, the Commission does not construe the rule as reaching entities as far removed as a telephone answering service. Second, to the extent that the concern is that not all employees would possess the substantive knowledge to respond to phone inquiries, the uninformed employees could simply refer calls to someone who was familiar with prices. Moreover, the vast majority of information would be available on the price lists themselves, and thus likely could be given out even by part-time or unknowledgeable employees.

Another concern raised was the possibility that the availability of telephone price information could lead to bait-and-switch practices by funeral providers.[142] Such practices are always a potential problem. However, any funeral providers who gave out false or misleading information over the telephone or engaged in bait-and-switch tactics would be engaged in practices which violate Section 5 of the FTC Act and the laws of virtually every state. Nothing in the rule encourages such deception, nor does the rulemaking record suggest that the practice would be engaged in by the majority of ethical funeral directors.[143]

Third, some funeral providers suggested that the funeral transaction is too complex to explain over the telephone and that telephone price information would tend to confuse consumers.[144] In the Commission's judgment, the informational disclosures which the rule requires can be readily understood and used by the majority of consumers. To the extent that individual consumers find this information too complex, they would always be free, as they now are, to visit the funeral home either to obtain it or any other information which was available. Even if all of the details are not provided over the telephone, general comparisons can be useful.

Fourth and finally, funeral providers suggested that the provision might lead to price fixing because funeral providers would be forced to disclose their prices to competitors. Carried to its logical conclusion, this argument would suggest that price conspiracies are likely in any industry where firms have ready access to competitors' prices. However, access to price information tends to be easiest in precisely those markets where price competition is most intense. Obvious examples are food retailing and new and used car sales. Thus, the ready availability of price information is by no means a cause or a symptom of cartel behavior.

In the funeral market, moreover, where services currently tend to be sold as a fixed package and where little entry by new providers has occurred, funeral homes may already have acquired a fairly accurate knowledge of their competitors' prices. The problem is that *buyers* are currently unable to gather comparative price information efficiently and exert the kind of competitive pressure that would discipline the market. Thus, the Commission has concluded that the rule's price disclosure provisions are much more likely to stimulate competition than to serve as an instrument for policing pricing agreements.

B. *Section 453.3—Misrepresentations.*—1. *Introduction.* Section 453.3 addresses six types of misrepresentations which have occurred in funeral transactions.[145] These misrepresentations concern: (1) Embalming; (2) caskets for cremation; (3) outer burial containers; (4) other legal and cemetery requirements; (5) preservative and protective value claims; and (6) cash advances. To remedy certain of these misrepresentations the rule requires funeral providers to disclose several items of information on the price list which consumers receive at the beginning of the funeral transaction.

The Commission's authority to prevent consumer deception in the marketplace has been well-established through an extensive body of Commission and court cases. Section 5 is violated whenever a seller misrepresents or fails to disclose to a purchaser facts that are material to the consumer's purchasing decision.[146]

A statement is deceptive under Section 5 of the FTC Act if it actually misleads consumers, or has the tendency or capacity to deceive a substantial segment of the purchasing public in some material respect.[147] Thus, Section 5 prohibits not only outright falsities, but also statements which, while literally true, are deceptive in their overall impression.[148] Because deceptive information distorts the marketplace, false or misleading statements are unlawful regardless of whether the seller intends to deceive.[149] In determining whether a claim is deceptive, the seller's claim must be considered in its entirety and evaluated in light of the reasonable expectation or understanding of the expected consumer audience.[150] The deceptive quality of a statement may be shown by evidence of actual deception, or the likelihood of deception can be inferred by the Commission by an examination of the claim itself and on the basis of its accumulated expertise.[151]

Section 5 prohibits not only affirmative misstatements of facts but also the failure to disclose material facts even where the seller has made no representations. In the cases where a failure to disclose material information was found to be deceptive, the Commission has looked to the reasonable assumption which consumers make concerning a product or service based on the product's nature, appearance or intended use.[152] Where

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[142] *See, e.g.*, R. Goodwin, Texas funeral director, Atl. Stmt. at 7; A. Rayner, Illinois funeral director, Tx 4276.

[143] *See* Report of the Presiding Officer, *supra* note 8, at 95.

[144] *See, e.g.*, R. Grayson, Minnesota FDA, Tx 3378; C. Swartz, Pennsylvania funeral director, Tx 13,948; Oklahoma FDA, Tx 8895.

[145] As originally proposed, the rule addressed these misrepresentations through a general provision prohibiting misrepresentations of legal, public health, religious and cemetery requirements. *See* 40 FR 39901, at 39902 (August 29, 1975). The final rule addresses specific misrepresentations (*i.e.*, misrepresentations regarding the legal necessity for embalming, caskets, and outer burial containers) in order to achieve greater specificity in defining the prohibited conduct. This was necessitated by the *Katharine Gibbs* decision. (*See* Part I (B), *supra*). In addition, the Commission has retained a general prohibition against misrepresentations of legal, cemetery, or crematory requirements to prevent misstatements aside from those specifically defined.

The disclosure requirements associated with the misrepresentation provisions also have been modified in the final rule so as to minimize the paperwork burden on funeral providers. The rule proposed in 1975 mandated more detailed information on the legal requirements concerning disposition of dead bodies and provided that separate documents containing disclosures on legal requirements be given in addition to written price lists.

[146] Firestone Tire and Rubber Co., 81 F.T.C. 398 (1972) *aff'd*, 481 F.2d 246 (6th Cir.), *cert. denied*, 414 U.S. 1112 (1973), *remanded in part*, 492 F.2d 1333 (2d Cir. 1975); Cigarette Rule SBP, *supra* note 66, at 8350; FTC v. Raladam, 316 U.S. 149 (1942); FTC v. Algoma Lumber Co., 291 U.S. 67, 78 (1934); FTC v. Royal Milling Co., 288 U.S. 212, 216–217 (1933).

[147] FTC v. Colgate Palmolive Co., 380 U.S. 374 (1965); FTC v. Standard Education Society, 302 U.S. 113 (1937); J.B. Williams v. FTC, 381 F.2d 884, 889 (6th Cir. 1967); Montgomery Ward v. FTC, 379 F.2d 666, 669 (7th Cir. 1967); Feil v. FTC, 285 F.2d 879, 896 (9th Cir. 1960); Materiality is defined as the capacity to affect purchasing decisions. FTC v. Colgate Palmolive, *supra*.

[148] J.B. Williams v. FTC, 381 F.2d 884, 889 (6th Cir. 1967); Carter Products Inc. v. FTC, 323 F.2d 523 (5th Cir. 1963).

[149] *See* FTC v. Algoma Lumber Co., 291 U.S. 67, 81 (1934).

[150] J. B. Williams v. FTC., 381 F.2d 884, 889 (6th Cir. (1967); Carter Products Inc. v. FTC, 323 F.2d 523 (5th Cir. 1963); Peacock Buick, Inc., 86 FTC 1532, 1555 (1975). A claim is not deceptive if it is likely to mislead only an insignificant and unrepresentative segment of the class of persons to whom the claim is made. Universe Co., 63 FTC 1282, 1290 (1963).

[151] FTC v. Colgate Palmolive Co., *supra* note 147, at 391–92.

[152] Past Commission cases have held that it is a deceptive act or practice to fail to disclose such

the effect of nondisclosure is to deceive a substantial segment of the buying public with respect to a material fact by exploiting the reasonable expectations of consumers, the failure to disclose constitutes a violation of Section 5.[153]

Where proof can be shown that a claim is deceptive, no evidence need be shown as a matter of law that consumers were in fact misled by the claim. Rather, the Commission can make a determination based on its experience, as to what the reasonable expectations of consumers were under the circumstances and hold that the failure to disclose the information in question resulted in harm.[154]

The impact of specific failures to disclose are described below. However, it is the Commission's general finding that, in all these specific cases, many consumers have reasonably believed there were legal or cemetery requirements relating to the disposition of remains. Because the consumers were unfamiliar with the precise nature of the requirements, a significant number of consumers made incorrect assumptions about them. Thus, as we discuss below, many consumers reasonably believe that certain procedures (such as embalming) or particular goods (such as caskets or outer burial containers) are required and, therefore, not subject to individual discretion. Resulting purchase decisions are due, at least in part, to incorrect assumptions by consumers about material facts. Funeral providers have failed to disclose correct information about such facts and have, in some cases, made false claims about them.

material facts as: 1) the rayon content in rayon clothing, which is indistinguishable from silk or wool; Mary Muffet, Inc. v. FTC, 194 F.2d 504, 505 (2d Cir. 1952); Seymour Dress & Blouse Co., 49 F.T.C. 1278, 1282 (1953); Academy Knitted Fabrics Corp., 49 F.T.C. 697, 700–01 (1952); 2) the true composition of base metal watchcases where the watchcases look like precious metal; Theodore Kagen Corp. v. FTC, 283 F.2d 371 (D.C. Cir. 1960), *cert. denied*, 365 U.S. 843; 3) whether a book being sold is an abridged or condensed version; Bantam Books, Inc. v. FTC, 275 F.2d 680, 682 (2d Cir 1960); 4) a policy of assigning consumers' notes of indebtedness to third parties against whom the consumer may not be able to raise claims or defenses based on the sales contract; All-State Industries, Inc. v. FTC, 75 F.T.C. 465 (1960), *aff'd*, 423 F.2d 423 (4th Cir.), *cert. denied*, 400 U.S 828 (1970); 5) that a prescription drug used by a weight loss clinic was not approved by the Food and Drug Administration; and Simeon Management Corp. v. FTC, 579 F.2d 1137 (9th Cir. 1978).

[153] Cigarette Rule SBP, *supra* note 66; Statement of Basis and Purpose, Trade Regulation Rule, Labeling and Advertising of Home Insulation, 44 FR 50217, 50223 (1979); Statement of Basis and Purpose, Trade Regulation Rule: Care Labeling of Textile Wearing Apparel, 36 FR 119 (1971), 16 CFR Part 423.

[154] *See e.g.*, All-State Industries, Inc. v. FTC, *supra* note 152; Simeon Management Corp. v. FTC, *supra* note 152.

2. *Section 453.3(a)(1)—Embalming.*— (a) *Evidence.* Only in exceptional circumstances does state law absolutely require embalming. The two most common occasions are those situations where the body must be transported interstate (where embalming prevents decomposition during transport) and where death has occurred from one of several communicable diseases.[155] Since embalming is not generally required by law, consumers usually have the right to decline to have a body embalmed if they wish. Consumers may wish to decline embalming services because of personal or religious beliefs or in order to avoid the expense of embalming. The record shows, however, that most funeral directors do not disclose that embalming is optional. It is common practice in the industry to embalm without specifically requesting permission.[156] Indeed, industry members stated in comments filed in this proceeding that embalming should be performed unless specificallly rejected by the consumer.[157] The Presiding Officer found that prior express permission for embalming is rarely obtained.[158]

In addition to the widespread failure to disclose that embalming is not required by law, a significant number of funeral providers have affirmatively misrepresented state laws regarding embalming. While such affirmative representations do not appear to be the norm, the record documents numerous instances in which consumers were told that the law required embalming when in fact it did not.[159] In other cases consumers were led to believe that embalming was a legal requirement by statements that embalming is "required" or "necessary."[160] While embalming is a practical necessity where there is viewing for several days before disposition,[161] references to the "necessity" of embalming may mean that the funeral provider requires embalming in all cases. In any event, such representations have generated substantial confusion among consumers as to what the law requires.

The Commission finds that the failure to disclose to consumers that embalming is usually not required as a matter of law is a deceptive act or practice within

[155] Although there is considerable dispute over the necessity and effectiveness of embalming to prevent the spread of disease, many states require embalming under these circumstances. *See, e.g.*, Rules and Regulations of the State Board of Embalming of the State of Kansas Relative to Embalming, Art. III, §§ 63–3–10 to 63–3–16 (1976); N. H. Rev. Stat. Ann, § 325:40–a (Supp. 1975); Colo. Rev. Stat. § 12–54–112(4) (1973). *See also* CFA, Analysis of State Statutes, Rules, and Regulations Affecting the Funeral Practices Industry, Atl. Stmt. at 18–22 (June 22, 1976).

[156] A number of funeral directors testified during the proceedings that they engage in this practice. Several further felt qualified to describe it as a common practice in their community. *See, e.g.*, W. Rill, Pres., Washington FDA, Tx 5563; F. Noland, Pres., Idaho FDA, Tx 5836; J. Page, California mortician, Tx 7373; L. Ruffner, past Pres., Arizona FDA, Tx 7851; N. Heard, Pennsylvania funeral director, Tx 13,150; V. Polli, Sec.-Treas., Vermont FDA., Tx 2198; R. Murphy, Pres., NSM, Tx 12,596; R. Johnson, Indiana funeral director, Tx 12,595; J. Kaster, Texas State Representative, Tx 6119; S. Waring, Treas., NFDA, Tx 665; R. Thompson, member, Conn. State Board of Examiners of Embalmers and Funeral Directors, Tx 2034. The results of informal surveys of funeral directors also found that a high percentage routinely embalm without seeking permission. *See, e.g.*, CFDA FTC and You, Questionnaire Results, L.A. Ex. 23 (CFDA survey revealed that half of the funeral directors responding do not obtain permission for embalming); S. Chenoweth, Director, Minnesota Office of Consumer Services, II–C–51, at 5–6; H. Sandhu, President, The Memorial Association of Central New Mexico, Inc., II–C–1280. Similarly, a survey of consumers found that embalming took place in 98% of the cases where the respondents had not requested it. P. Sperlich, Ph.D., CalCAG, Tx. 7410.

[157] Funeral providers take the position that most consumers expect that funeral directors will immediately embalm the body, and consequently give implied permission to embalm when they authorize the funeral director to pick up the body. They also assert that placing the burden on the consumer to tell the funeral director not to embalm best serves most consumers, because most consumers choose a funeral with viewing, and embalming must be done quickly after a death to ensure the best cosmetic results. *See, e.g.*, B. Hotchkiss, California funeral director, Tx 8520–21; J. Altmeyer, West Virginia funeral director, Tx 11, 735–36; G. Brown, Vermont funeral director, Tx 12,058; C. Lightner, past Pres., NFDMA, Tx 10,417; J. Wright, Mississippi funeral director, Tx 9466–67; H. Ruidl, counsel and Exec. Sec., Wisconsin FDA, Chi. Stmt. at 1–2; T. J. Proko, past Pres., Wisconsin FDA, Tx 4186–87; J. Curran, Pres. New York FDA, Tx 90. *See also* L. Frederick and C. Strub, The Principles and Practice of Embalming 191 (1967) (the act of handing over a dead body carries with it an implied permission to embalm).

[158] Report of the Presiding Officer, *supra* note 8, at 54.

[159] Statement, New York Public Interest Research Group, (NYPIRG), Ex. J at 3 (18% of respondents told that embalming was specifically required by law); Survey, Funerals in Minnesota: Customer Experiences conducted by Minnesota Office of Consumer Services, XI–592, at 27 (hereinafter cited as "Minnesota Survey") (22% of respondents told that embalming is always required by law); Survey, Continental Association of Funeral and Memorial Societies, Inc., D.C., August 5, 1976; (28% of respondents who used embalming told it was required by law). *See* also the following consumer complaints in Category II–B (4, 379, 417, 893, 1030, 1114, 1256, 1534, 1801, 3495, 3621).

[160] Consumer complaints in Category II–B (432, 453, 375, 740, 1863) and Category X (1–77).

[161] Embalming is the only means by which decomposition can be halted temporarily for viewing for more than a day or so. Refrigeration retards decomposition, but does not provide the cosmetic effects of embalming and is not practical when the body is on view for more than several hours. L. Frederick & C. Stub, The Principles and Practices of Embalming (1967). However, where disposition does not involve viewing (e.g., closed casket, direct dispostion), the temporary preservation of the body and the cosmetic effects of embalming are not necessary, although some consumers may still desire them.

the meaning of Section 5 of the FTC Act. The evidence discussed above demonstrates that this practice is widespread in the industry, causing many consumers who in fact believe that embalming is required by law, *i.e.*, that it is not an option, to be misled.[162] In addition, the Commission finds the making of affirmative mistatements about legal requirements for embalming to be a deceptive act or practice in violation of Section 5 of the FTC Act. The evidence further indicates that such misinformation causes some consumers to purchase embalming services in situations where the services might otherwise not be purchased.[163] Since embalming generally costs $50 to $150,[164] consumer injury resulting from the misrepresentation is clear.

(b) *Rule Provisions.* Therefore, in § 453.3(a)(1) of the rule, the Commission defines as deceptive: (1) False or misleading statements that state or local law requires that a deceased person be embalmed; and (2) the failure to disclose that embalming is not usually required by law. section 453.3(a)(2) imposes two remedial requirements on funeral providers. First, it prohibits representations that a body must be embalmed in certain specified situations in which embalming is unnecessary, such as direct cremation or immediate burial. Second, it requires that the general price list mandated by § 453.2(b)(4) contain a disclosure concerning embalming requirements. The disclosure informs consumers that embalming is generally not required by law, but that it is usually necessary for certain funeral arrangements, for example, a funeral with viewing. It also states that consumers can usually select an arrangement which does not require embalming.

These requirements are designed to prevent not only the misrepresentations defined in § 453.3(a)(1), but also the acts defined in § 453.4(b)(1). Under that provision, funeral providers may not require consumers to purchase certain goods or services as a condition to obtaining others. Thus, funeral providers may not condition the availability of their services or offerings on agreement by the consumer to purchase embalming. The general rule, accordingly, is that a funeral provider may not require that consumers purchase embalming services as a matter of funeral home policy. There are two exceptions to this. First, in some cases embalming may be required as a matter of law. Second, for certain types of funeral arrangements embalming is a practical necessity because of the natural decomposition of the body. Funeral director are not prohibited from requiring embalming in these instances. Accordingly, § 453.3(a)(2)(i) prohibits statements that a body must be embalmed for specified arrangements for which embalming is not a practical necessity, for example, direct cremations. A funeral director may require embalming for arrangements not listed in § 453.3(a)(2)(i), such as a funeral with a viewing.

2. *Section 453.3(b)(1)—Casket for Cremation.*—(a) *Evidence.* A second misrepresentation identified in the rulemaking record concerns representations by funeral providers that state law requires consumers to purchase caskets to have the deceased cremated. Currently, no state has such a requirement.[165] In the absense of any disclosure to the contrary, many consumers believe that there are no alternatives to caskets or that state and local laws require the use of a casket.[166] Yet few funeral directors provide such a disclosure.[167] Moreover, some funeral providers affirmatively misrepresent the legal requirements for cremation through claims to consumers that state or local law mandates the purchase of a casket. While the evidence suggests that such affirmative misrepresentations are not typical, the record contains consumer testimony and letters which reveal that a number of funeral providers have falsely informed consumers that state law required a casket for direct cremation services,[168] and consumer group representatives have attested that misrepresentations about a casket for cremation requirements are a significant problem.[169] In addition, some funeral directors misrepresent that crematories require the purchase of a casket when such is not the case.[170] Funeral directors also inform consumers who desire direct cremation that a casket is "required" or "necessary" or what they "have to" purchase a casket.[171] There is some evidence to suggest that consumers often interpret these statements to mean that the law requires purchase of a casket [172] and in any event, it is clear that these consumers were not told that the caskets were not legally required.

The misrepresentations by funeral providers regarding legal requirements for cremations result in consumers purchasing caskets when they do not need to and otherwise might not. There are many different types of alternative containers suitable for holding and transporting remains, and for use in

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[162] One study showed that where consumers arranging funerals were unaware that embalming was not legally required, embalming took place in 88.1% of the cases. On the other hand, where consumers were aware that embalming was not legally required, embalming took place in only 58.5% of the cases. Sperlich, L.A. Ex. 17. *See also* Minnesota Survey, *supra* note 159, at 27; CAFMS Survey, D.C. Ex. 39; CAMP Survey, *supra* note 92; *see also* statements of individual consumers, *supra* note 160.

[163] *See, e.g.*, Blackwell Survey, *supra* note 59 (NFDA-sponsored survey of 400 consumers found that only 60% of respondents would definitely choose embalming, 9.5% would not, and 25% were undecided); D. Daley, Seattle funeral director, Tx 5933 (funeral home which presents embalming as true option reports 30% declination rate); CAMP Survey, *supra* note 92 (less than half of those who had purchased embalming expressed a preference for it).

[164] 1978 Staff Report, *supra* note 9, at 196, n. 94.

[165] *See* "Funeral Practices, Survey of State Laws and Regulations," CAFMS, XVI–118, Appendix III–C (hereinafter cited as "CAFMS Survey of State Laws and Regulations").

[166] Surveys show consumer misunderstanding of state laws. *See, e.g.*, M. Stillwell, CAMP, Tx 6032 (49% of respondents thought a casket was required or didn't know); Blum Study, *supra* note 57, at Short Form (42% of respondents did not know if casket required for cremation or thought one is); CAFMS Survey, D.C. Ex. 39, at Ex. 2 (40% of respondents believed caskets required by state law). Other evidence indicates that consumers are unaware of alternatives to traditional caskets. *See, e.g.*, M. Fought, Ohio consumer, II–C–58; E. Klein, Vice President, CAFMS, Klein Ex. 1 (NY) at 2–3; K. Marsh, California mortician, Tx 6801; C. Moles, Iowa consumer, II–B–318; N. Kobernuss, Arkansas consumer, II–B–657.

[167] Surveys offer proof that consumers are often unaware that state laws do not require caskets even after they have been involved in a funeral transaction. *See, e.g.*, Blum Study, *supra* note 57. This evidence suggests that funeral providers are not disclosing to consumers that caskets are not necessary. Moreover, a number of consumers complained about having to buy caskets for cremation. *See, e.g.*, consumer complaints in category II–B (16, 18, 24, 439, 1067, 1152, 1464, 2174). These complaints indicate that the funeral directors probably did not disclose that state law did not require a casket.

[168] *See, e.g.*, Consumer complaints in Category II–B (271, 346, 417, 458, 602, 719, 1165, 1379, 1444, 1474, 1561, 5753, 6749), Category X–1 (66, 99, 24), written comments and testimony; Comments of NRTA/AARP, II–C–1516, at App. 2 (sample letter 6, #5); J. Berk, Cal. NRTA/AARP, L.A. Ex. 2, at 6–8; W. Bowles, Ark. consumer, Tx 9257–58; K. Marsh, Cal. funeral director, Tx. 6749; C. Crawford, Tex. consumer, Tx. 6634; Judy, Chicago Statement #51; D. Nugent, Ill. consumer, Chicago Statement #12.

[169] *See* G. Richardson, Tx 1387 and Richardson, N.Y. Ex. 1 (NY) at 3; S. Cook. Pres., Council Memorial Society, Coinnecticut, Tx 1459; R. Haynes, Pres. Memorial Society of Eastern Oklahoma, II–C–1230; E. Knapp, Federation of Funerals and Memorial Societies of Greater Washington, D.C., D.C. Ex. 14, at 2.

[170] *See* F. Sweeton, East Tennessee Memorial Society, Tx 9576–77. *See also* A. Vickery, Conn. consumer, II–C–45.

[171] *See, e.g.*, D. Pritt, Pa. consumer, II–B–4; Oklahoma consumer, VII–8; A. Garries, Wash. consumer, II–B–1030; L. McCoach, Fla. consumer, II–B–982; M. Carpenter, N.Y. consumer, II–B–1863; B. Larratt, Maine consumer, X–1–64; W. Coleman, Ark. consumer, II–B–740; R. McGuire, Tex. consumer, X–1–55; M. Heptonstall, Tex. consumer, II–B–34; W. Pirnack, Tex. consumer, II–B–136; Comments of NRTA/AARP, II–C–1516, at App. 2 (sample letter 1 and 2); F. Fought, Ohio consumer, II–C–58; M. Kent, Michigan consumer, X–1–77.

[172] *See* L. MacDonald, Illinois, NRTA/AARP, Tx 2640; H. Wienerman, NY NRTA/AARP, Tx 233–34.

cremation. Examples of these containers include unfinished wood boxes and a variety of non-metal receptacles designed for the encasement of human remains, such as containers made of cardboard, pressed-wood or composition materials. In addition, pouches of canvas or other materials (such as polyethylene) can be used for direct cremation. Record evidence suggests that substantial numbers of consumers, possibly as many as 25%, would decline to purchase a casket when presented with an option to do so.[173]

(b) *Rule Provisions.* In response to these problems, § 453.3(b)(1) of the rule defines it as a deceptive act or practice for funeral providers either to represent the law as requiring a casket for cremation or otherwise to represent that a casket (other than an unfinished wood box) is required for cremation. These claims clearly cause harm to the extent that they induce consumers to purchase caskets, where they otherwise would not. Accordingly, in § 453.3(b), the Commission prohibits funeral providers from telling consumers that, by law, a casket must be purchased when the remains are going to be cremated. To prevent this deceptive practice, § 453.3(b)(2) requires that funeral providers who arrange direct cremations place on the general price list an affirmative disclosure concerning casket-for-cremation requirements. This disclosure would inform consumers that they can purchase an unfinished wood box or alternative container for direct cremation. It also describes the construction of various types of alternative containers.

The disclosure requirement is intended to prevent the misrepresentations defined in § 453.3(b)(1) and also the unfair or deceptive acts defined in § 453.4(a)(1). Section 453.4(a)(1) prohibits funeral providers from requiring consumers to purchase a casket, other than an unfinished wood box, for direct cremation. The disclosure required by § 453.3(b)(2) prevents funeral providers from requiring caskets for direct cremation by insuring that consumers are aware of their right to select an alternative.

[173] A funeral home chain which operates 27 funeral homes in Oregon, Washington and Arizona advises its customers that a casket purchase is an option. The chain offers its customers minimal body containers in lieu of a casket, or permits them to select no container whatsoever. The president of the chain testified, in analyzing 1,142 cases, that 73.5% of his clients chose some type of casket, 14.9% chose the body container, and 9.1% rejected any container. *See* E. Purdy, Sea. Ex. 3, at 20.

3. *Section 453.3(c)—Outer Burial Containers.*—(a) *Evidence.* Outer burial containers, used to prevent collapse of grave space, are not required by state law.[174] Many cemeteries, however, do require some form of outer burial container, but generally this requirement may be satisfied by a simple grave liner rather than a more expensive burial vault.[175] Some funeral directors, however, have told consumers that state law required the purchase of an outer burial container or have misrepresented cemetery requirements regarding burial vaults.[176]

Additionally, survey evidence shows that many consumers believe that a burial vault or some form of outer burial container is required by law.[177] The rulemaking record also reveals that consumers are generally unaware of the existence and availability of grave liners, and that funeral providers have failed to disclose this information. As a result, many consumers may purchase a burial vault in the erroneous belief that there are no alternatives.[178] Because the cost of burial vaults tends to be substantially higher than that of liners,[179] the monetary injury to consumers from unnecessary purchase of these items can be substantial.

(b) Rule Provisons. In § 453.3(c) of the rule, the Commission defines as deceptive (1) false or misleading representations that state law or individual cemeteries require the use of outer burial containers, and (2) the failure to disclose that state law does not require the purchase of an outer burial container. To prevent these practices, § 453.3(c)(2) requires that a written disclosure appear on the outer burial container price list. The disclosure explains that state law does not require the use of outer burial containers, that outer burial containers are sometimes required by cemeteries to prevent the grave from sinking in and that either a burial vault or grave liner will satisfy this purpose.

4. *Section 453.3(d)—Legal and Cemetery Requirements Generally.*—(a) *Evidence.* As discussed above in connection with § 453.3(a)–(c), the rulemaking record reveals that funeral directors have misrepresented legal, cemetery or crematory requirements regarding the need for embalming, caskets for cremation and outer burial containers. In addition, the record indicates that there are other misrepresentations which have been made to persons purchasing funerals. For example, some funeral providers have told consumers that cremated remains must be buried or that state law required the use of a sealed casket.[180] All of these representations can result in the purchase of unwanted and unnecessary items.

(b) *Rule Provisions.* In § 453.3(d)(1) of the rule, the Commission declares that it is deceptive to misrepresent that federal, state or local laws or particular cemeteries or crematories require the purchase of funeral goods or services. As a remedy, § 453.3(d)(2) provides that a funeral provider who tells a consumer that a legal, cemetery, or crematory requirement mandates the purchase of funeral goods or services must describe that requirement on the statement of funeral goods and services selected, required by § 453.2(b)(5).

The remedial requirement in § 453.3(d)(2) is intended not only to provide consumers with information, but also to aid enforcement of the prohibitions on affirmative misrepresentations. Prohibitions on oral misrepresentations are extremely difficult to police. The requirement of § 453.3(d)(2) serves to document the representation that has been made to the consumer. Since § 453.6 of the rule provides that a copy of the statement of services must be retained for one year, evidence of violations will be preserved.[181] The requirement will

[174] The Commission is aware of only one local jurisdiction in the country which requires use of an outer burial container, and it permits either a grave liner or a burial vault to be used. *See* 1979 Oral Presentations, XV–1, at 151–52 (Statement of Thomas Clark).

[175] *See* Memorandum from N. Norvold, Legislative Research Analyst, to B. Morrision, Arizona State Senator, re: Cemeteries that require vaults, L.A. Ex. 16; Wycoff, President, George Washington Memorial Park, Tx 940.

[176] *See, e.g.*, F. Sweeton, President, East Tennessee Memorial Society, Tx 9577; M. Siegel, Illinois consumer, Tx 2957; E. Sheehan, Washington, D.C. consumer, Tx 14,668; E. Sloan, Director, D.C. Office of Consumer Protection, Tx. 13,874; R. Mee, casket manufacturer, III–F–16; W. Heller, Alabama consumer, X–1–74; B. Reeves, past president of Georgia Cemetery Association, Tx 10,209.

[177] *See* CAMP Survey, *supra* note 92; CAFMS Survey, D.C. Ex. 39, at Ex. 2.

[178] *See, e.g.*, W. Cushman, Maine consumer, Tx 1360–61. B. Reeves, President, Southeastern Advertising and Sales System, Tx 10,209; W. Heller, Alabama consumer, X–1–74–, at 3,6. The National Concrete Burial Vault Association opposed this provision in part because of the fear that consumers would purchase fewer vaults if they were given the proposed disclosures. Arnold Vice-President, National Concrete Burial Vault Association, Tx 11,538–40.

[179] Testimony show that liners range in price from approximately $55, (T. Sampson, Tx 970), to $180, (M. Arnold, Vice-President, National Concrete Burial Vault Ass'n, Tx 11,524), and that vaults range from $190, (T. Sampson, Tx 970) to $1500, (Comments of CFA, II–B–1518, at 40).

[180] *See, e.g.*, J. Fanagan, CAFMS, Atl. Ex. 9, at 3; M. Kent, Michigan consumer, X–1–77, D. Davis, Mississippi consumer, II–B–417.

[181] A funeral provider intending to make a misrepresentation might well choose not to write it

significantly aid the Commission in detecting and proving violations and creates an additional incentive to comply with the rule. This is particularly important in view of the large number of funeral providers throughout the country.

The Commission has included § 453.3(d) in the final rule to deter future misrepresentations not otherwise specifically proscribed by the rule. The Commission's authority to impose fencing-in requirements in adjudicatory proceedings has been confirmed by the Supreme Court.[182] The rationale for fencing-in is equally applicable to rulemaking proceedings, especially, as here, where the provision imposes a minimal cost burden. The reasonableness of a fencing-in provision is to be judged, therefore, in light of the evidence regarding the similar illegal conduct which forms the basis for the fencing-in provision.

5. *Section 453.3(e)—Preservative and Protective Value Claims.*—(a) *Evidence.* While it is possible briefly to delay decomposition of a deceased body, funeral goods and services such as embalming or sealed caskets do not preserve human remains for long periods of time.[183] However, the record indicates that some funeral providers affirmatively misrepresent the preservative value of embalming[184] and burial vaults.[185] Moreover, both funeral providers and manufacturers often make protective value claims with regard to certain funeral goods, such as caskets and burial vaults,[186] stressing that certain products are airtight, watertight, or offer special protection against the elements. It is impossible to estimate how often such claims are false, because consumers are unable to discover whether protective claims are inflated without exhuming the body. There are, however, reports of instances in which exhumation revealed that the casket had failed to protect the remains, despite claims made by manufacturers.[187]

(b) *Rule Provisions.* While the evidence clearly establishes that false claims of this nature have been made, it does not indicate that these claims are widespread. The Commission has, nonetheless, concluded that a prohibition on such false claims is warranted. Claims concerning the ability of a product to protect the body of a close friend or relative can have a significant capacity to induce the purchase of items which otherwise would not be purchased. Indeed, claims that a product or service will protect the integrity of the body of a deceased person are among the most pernicious made for they directly appeal to the vulnerable emotional state of the consumer. Accordingly, the Commission has chosen to include a provision addressing this practice. Section 453.3(e) prohibits representations that funeral goods or services will delay natural decomposition of the body for an extended period of time. It also prohibits false or misleading claims that caskets, burial vaults or other funeral goods will protect the body from gravesite substances.

6. *Section 453.3(f)—Cash Advances.*—(a) *Evidence.* In a typical funeral transaction, the consumer often pays the funeral provider for so-called "cash advance" items. These items are goods and services which the funeral provider arranges to purchase but which are actually provided by a third party, *e.g.*, flowers, obituary notices, limousine rentals. Many funeral providers charge a markup on these items, or they may simply charge consumers the full price for the cash advance item and receive a rebate or volume discount from the supplier for the cash advance item.[188]

The Commission does not suggest that it is improper for funeral providers to profit on items obtained from third parties. It is clear that it is wholly proper for providers to do so. Moreover, it is clear that the services or goods being received by consumers, (*e.g.*, flowers, obituary notices etc.) are goods which they do wish to purchase. If, with knowledge that the funeral provider will profit from ordering flowers or arranging obituary notices, a consumer chooses to use the services of a funeral provider, a charge for that service should be anticipated. However, the undisclosed charging of a markup for cash advance items is deceptive because consumers believe that items labeled "cash advances," "accommodation" or "cash disbursement" are being provided at cost. There is an implicit representation that the cash advance transaction involves merely a forwarding of cash by the funeral provider and a subsequent dollar-for-dollar reimbursement by the consumer.[189]

In spite of this, the evidence demonstrates that many individual funeral providers do charge markups for cash advances. In a 1976 survey of California funeral directors, 12% of the 291 respondents admitted charging "in excess of the amount actually advanced for any items of service labeled as 'cash advances' or 'accommodation items.'" [190] NFDA's annual survey of funeral

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down. However, the disclosure form which is given to consumers informs them that if state law requires the purchase of goods or services, a written explanation will be provided. Thus, if an oral representation is made, and no disclosure is made of the requirement, the consumer is at least on notice that something may be wrong.

[182] The Court noted in *FTC* v. *Ruberoid,* 343 U.S. 470, 473 (1951): Orders of the Federal Trade Commission are not intended to impose criminal punishment or exact compensatory damages for past acts, but to prevent illegal practices in the future. In carrying out this function the Commission is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past.

[183] *See* L. Frederick and C. Strub, The Principles and Practice of Embalming 131–32, 238–41 (1967).

[184] Several funeral directors commented that embalming does preserve the body, or that they were taught to say it does. *See, e.g.,* J. Todd, co-owner and manager of an Arkansas funeral home, Tx 8752; Ill. F.D.A. XVI–12, at 2; C. Ronald Savage, Oklahoma funeral director, XVI–162, at 2.

[185] *See. e.g.,* O. Matthews, Maryland Citizens Consumer Council, Tx 14,054 (in surveys of Maryland funeral homes, two funeral directors stated that vaults preserved the body); Rev. D. Haun, Oklahoma clergy, Tx 9935.

[186] *See,* J. Harris, Utah consumer, Tx 8092; G. Derrick, Illinois consumer, Chi. Stmt. at 2; C. Gladys, Michigan consumer, Tx 3857–58; B. Hughey, District of Columbia consumer, Tx 10,368–69; M. Blackburn, Florida consumer, VII–176; R. Nesoff, former Director of Investigation, New York State Temporary Commission on Living Costs and the Economy, Tx 345; T. Kuhn, *Undertakers Press Customers to Hike Bills, Reporter Finds,* Arizona Republic September 14, 1975, and articles that follow, VI–D–49, at A–20. (Caskets are often represented as airtight and waterproof). Companies refer to their caskets and vaults with names which imply long-term protections or preservatives, *e.g.,* "Invincible" (Boyertown), X–1–93. *See also* M. Siegel, Illinois consumer, Tx 2957; O. Adams, Michigan consumer, II–B–2119.

[187] New York State Temporary Commission on Living Costs and the Economy, Investigation into the Practices of the Funeral Industry, VI–D–16.

[188] *See, e.g.,* G. Marshall, Massachusetts, clergy, Tx 1194 (clergy honoraria); S. Fritchman, California clergy, Tx 6515 (clergy honoraria); Dr. J. Marcelli, member, New York Funeral Directing Advisory Board, Tx 579–80 (florist fees and obituary notices). *See also* J. Todd, Arkansas funeral director, Tx 8754; N. Gregory, former California funeral director, Tx 8645; G. Brown, Vermont funeral director, Tx 12,067; R. Mee, owner of Wisconsin Casket Co., III–F–16; B. Bennett, Florida funeral director, II–A–518; H. Senison, New York funeral director, I–A–145.

[189] Consumer testimony and letters support this conclusion, since a number of consumers complained about having to pay an additional fee for cash advances. *See, e.g.,* L. Shirk, Tex. Consumer, II–B–1210; D. Bailey, Maryland consumer, II–B–358; Maryland consumer, VII–101. Moreover, testimony and statements by industry members support the conclusion that the practice of adding undisclosed markups to cash advance items is deceptive. Two of the major trade associations, NFDA and OGR, agreed that funeral directors should not profit on cash advances. *See* Comments of NFDA, II–A–659, at 52; Comments of OGR, II–A–666, at 16. Counsel for another trade association, NSM, testified that funeral providers should pass along any rebates they receive on items represented as cash advances. *See* Statement of D. Murchison, Tx 12,606.

[190] California Funeral Directors Ass'n Questionnaire, "The FTC and You," L.A. Ex. 23. Considering the fact that many leaders of the industry believe that any mark-up on cash advances is deceptive, see note 189, *supra,* the 12% response is probably understated since many respondents would not want to admit using a deceptive practice.

homes indicates that, on a national level, funeral homes are receiving a 5% mark-up on cash advance items, amounting to $18,000,000 annually.[191] In addition, there is evidence from industry members,[192] consumers,[193] and businesses which provide cash advance items [194] that funeral directors charge more than they pay for items generally considered to be cash advances.[195]

Similarly, the failure to disclose that a markup will be included on a cash advance item misleads consumers who rely on their reasonable expectations. In ordinary usage, terms such as "cash advance," "accommodation items" or "cash advanced for your convenience" imply that the consumer is being charged only for the actual cash outlay. The use of this term in connection with items such as flowers, obituary notices, etc., which the consumer could easily obtain from a third party, creates the expectation that the amount billed the consumer is the same as the amount paid by the funeral provider.[196] Given this expectation, the failure to disclose the existence of a markup is a deceptive practice.

(b) *Provisions.* Section 453.3(f) defines as deceptive: (1) affirmative misrepresentations that the price charged for a cash advance item is the same as the funeral provider's cost; and (2) the failure to disclose to consumers that a markup is being charged on a cash advance item. In order to prevent these practices, § 453.3(f)(2) requires that funeral providers who charge a markup on cash advances disclose this fact on the general price list. It is important to note that this rule provision covers only those situations where the funeral provider makes an affirmative representation that an item is a cash advance, accommodation, cash disbursement item, or any term of similar import. While it may be true that some items are viewed by consumers as inherently "cash advances," the record in this proceeding does not warrant such a finding.

The Commission believes that requiring a disclosure that a markup is being used is a sufficient remedy in light of the evidence discussed below. Prior versions of the rule would have totally prohibited a profit on such items.[197] The Commission has rejected such a remedy because it views the remedy it has selected as being sufficient to correct the identified abuse, while constituting the minimum intrusion into the business practices of the providers.

C. *Section 453.4—Required Purchases of Goods and Services.*—1. *General Discussion.* When the death of a friend or relative occurs, the persons who will ultimately be charged with arranging the funeral will often not have determined what type of services they wish, nor may they be aware of the deceased's wishes concerning the form of disposition. In other instances death may be anticipated, as in the case of prolonged illness, and the preferred form of disposition selected.

When death is anticipated, market-oriented remedies, such as the provision of information through price lists, can serve to facilitate informed comparison shopping. For example, if consumers knew in advance that they would be called upon to arrange a direct cremation, they could select a provider who offered alternative containers for sale. In this manner, the expense of a casket could be avoided by the consumer, if he or she were so inclined. In many cases, however, the ultimate form of disposition simply has not been selected at the time death occurs. Thus, the person charged with contacting a funeral provider to pick up the body of the deceased may simply be unable to select a funeral provider on the basis of what goods or services they sell, or in what combinations those goods and services are offered for sale.

The fact that the funeral provider may, in many cases, receive the body before the form of final disposition has been selected by the consumer creates a situation with the inherent potential to diminish severely a consumer's ability to select only those goods and services desired. The evidence establishes that once a funeral home is in possession of a body, seldom is it removed to another funeral home.[198] As representatives of the funeral industry have acknowledged, competition in the sale of funeral goods and services does not exist at the point of sale.[199] If consumers are to have the ability to select the goods and services they want, and concomitantly to decline those they do not want, some intervention is necessary at the point of sale to eliminate prevailing industry practices which deny that choice.

Accordingly, in § 453.4 of the rule, the Commission prohibits funeral providers from requiring that consumers who are arranging funerals purchase goods or services which they do not want, as a condition of purchasing those which they do want. As discussed above,[200] many funeral industry members have offered their goods and services for sale only in predetermined packages, thereby denying consumers any ability to decline unwanted items. Section 453.4(a) of the rule prohibits funeral providers from requiring that consumers who wish to arrange direct cremations purchase a traditional casket, other than an unfinished wood box, for that cremation. Section 453.4(b) contains the general prohibition on funeral providers conditioning the sale of any goods or services on the required purchase of other goods or services.

2. *Section 453.4(a)—Casket for Cremation.*—(a) *Evidence.* A direct cremation is one which occurs without any intervening viewing, visitation, or ceremony with the body present.[201] Cremation, as an alternative to traditional burial, is increasing both in terms of the absolute numbers performed, as well as the percentage of all dispositions. Statistics indicate that approximately 3.9% of all dispositions in 1975 were direct dispositions, with the trend toward increasing numbers of such dispositions.[202] The evidence in the

[191] V. Pine, A Statistical Abstract of Funeral Service Facts and Figures 38 (1977) (hereinafter cited as "1977 Statistical Abstract"). The average cash advance charge is $185; average cost of cash advances is $175, representing about a 5% mark-up. If multiplied by two million deaths annually, a 5% overcharge would amount to $18,000,000.

[192] *See* note 188, *supra*. *See also* H. Gutterman, Funeral Director, Tx 1876; R. Thompson, Embalmer & Connecticut Funeral Director, Tx 2034; R. Ebeling, Former Managing Editor, Mortuary Management, Tx 6883–84; N. Gregory, former Calif. funeral director, Tx 8645; J. Page, Owner, Mortuary school, Tx 7386.

[193] *See, e.g.*, D. Bailey, Maryland consumer, II–B–358 (25% markup on obituary notice); M. Martin, California consumer, II–B–1695 (overbilled $62.75 on crematory charge); Cohen Statement, *supra* note 75, at 9 (crematory and newspaper overcharges); *Pittsburg Post-Gazette*, April 10, 1972, at 8, VI–D–36 (death notices); L. Shirk, Texas consumer, II–B–1210 (clergy honoraria).

[194] G. Marshall, Massachusetts clergy, Tx 1194; S. Fritchman, Calif. clergy, Tx 6515; T. Fulton, Wisconsin florist, II–B–234; L. Abbott, New York florist, II–C–82; C. Harness, Indiana hairdresser, X–1–16. *See also* H. Dailey, Missouri florist, II–B–297; D. Johnson, Oklahoma florist, II–C–15.

[195] In none of these instances is it clear whether the items were specifically labeled cash advances. However, they are of a type that are traditionally considered cash advance items.

[196] *See* evidence cited in note 189, *supra*.

[197] *See, e.g.*, 1978 Staff Report, *supra* note 9, at Appendix B, § 453.2(e).

[198] R. Harmer, Bd. member, CAFMS, Prof., California State Poly. U., D.C. Ex. 7, at 6; D. Cornett, California funeral industry sales representative, X–1–124; L. Bowman, The American Funeral 52 (paperback ed. 1964). *See* discussion in Section I(E), *supra*.

[199] D. Rollings, Executive Director, OGR, XIX, at 80 (1981 oral presentations).

[200] *See* Section II(A)(2)(c), *supra*.

[201] *See* discussion of the term "direct cremation" in Section II(E)(3), *infra*.

[202] Am. Funeral Director, June 1977, at 53. *See also* T. Sherrard, General Counsel, Telophase Society, Tx. 7966. Indicative of the increasing trend in direct dispositions is the increase in cremation rates. Cremation amounted to 9.7% of all dispositions in 1980, *see* Funeral Service Insider, Vol. 5, No. 49 (Sept. 14, 1981), up from 6.55% in 1975 (Cremation Association of North America, Post-Record Comment, XIV–897, at 6 and Exhibit 1). While not all cremations are direct cremations, a substantial percentage are.

record suggests that consumers seek direct cremations for diverse reasons, including simple personal preference and lower cost.[203]

Because cremation reduces a body to ashes, there is no need as there is in ground burial for a permanent container for the body. All that is needed is a container to transport the body to the crematory. If there is to be a viewing before the body is cremated, consumers may prefer to buy a casket to display the body.

The evidence suggests that a significant number of funeral directors require consumers to purchase caskets as a condition of supplying cremation services. Consumer complaints,[204] various surveys,[205] and testimony of funeral directors [206] all suggest that many funeral directors require caskets to be purchased when cremation is desired.

Requiring a consumer to purchase an expensive casket that is unnecessary and unwanted imposes significant consumer injury. While casket prices vary substantially, even the least expensive casket typically carried by a funeral home generally costs substantially more than a non-casket alternative. Although some industry representatives testified that caskets can be purchased by consumers for as low as $65,[207] the evidence indicates that the lowest priced caskets generally available to consumers arranging cremations generally fall in the range of $200 to $250.[208]

There are, however, containers which cost substantially less than even the least expensive casket. These containers, defined as "alternative containers" in the rule,[209] are generally constructed of cardboard, composition board, or are opaque pouches.[210] The record evidence shows that these products sell at retail for anywhere from $20 to $65.[211] Even taking the lowest end of the spectrum of casket prices, a funeral provider imposed requirement that consumers purchase a casket to obtain direct cremation services causes consumers to spend substantial additional money. The extent of this expenditure increases as the minimum price of the caskets offered for sale increases. Thus, a provider-imposed requirement that consumers purchase caskets for any form of disposition imposes a significant cost on those consumers which they might otherwise choose not to assume. As noted in the beginning of this section, this injury is not reasonably avoidable.

In weighing whether a practice is "unfair" under Section 5, the Commission must also consider any countervailing benefits to determine whether the practice imposed net injury. No testimony or comments provided any evidence of countervailing benefits. Indeed, funeral industry representatives agreed that there was "no justification" for requiring the purchase of a casket for direct cremation.[212]

Finally, in assessing a practice's unfairness, the Commission also looks to public policy as expressed in the decisions of other public bodies. No testimony or comments suggested that there was any public policy favoring the requirement of a casket for direct cremation, and at least nine states have actually prohibited such requirements.[213] Thus, to the extent that there is any public policy at all on this point, it clearly supports the Commission's position.

(b) *Rule Provisions.* Section 453.4(a)(1) defines it as unfair or deceptive for a funeral provider or a crematory to require that a casket other than an unfinished wood box be purchased for direct cremation.[214] The prohibition on requiring the purchase of a casket for a direct cremation extends to all funeral providers who arrange direct

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[203] Cremation Association of North America, Post-Record Comments, XIV–897, at 6 and Exhibits; 1978 Staff Report, *supra* note 9, at 216–18.

[204] *See e.g.*, over one hundred written consumer complaints in Category IIB (4, 16, 18, 24, 34, 136, 280) and X (34, 46, 55, 61, 64) and individual consumer testimony (C. Crawford, PhD, Tx 6634). In many of the written comments, it is not clear whether the complaints concern cremations other than direct cremations, in which caskets might be desirable for viewing purposes. In any event, it is clear that consumers resent being required to purchase caskets when they do not want to buy them.

[205] G. Richardson, Memorial Society of New England (43 out of 141 members returning replies reported encountering casket for cremation requirements); Rochester Memorial Society, Sampling of Funeral Directors on Use of Simpler Container for Cremation (1975), Klein, Ex. 2(3) (N.Y.) (eight out of fifteen local funeral directors required a casket for cremation); R. Fox, Ass't Attorney General, Vermont, Chi. Statement (survey by Vermont Attorney General's Office showed that over one-half of the state's funeral homes required a casket for cremation).

[206] While no funeral director testified that they personally required consumers to purchase expensive caskets if they wanted cremation, a number of funeral directors indicated that they required consumers to buy the least expensive casket they sold. *See, e.g.*, J. Curran, Pres., New York FDA, Tx 119; V. Polli, Secretary-Treasurer, Vermont FDA, Tx 2186; J. Wright, Mississippi funeral director, Tx 9450. This was confirmed by several other sources. Division of Consumer Affairs, Department of Community in Delaware 5 (1974), VI–D–9. However, in some instances the least expensive casket could be expensive. *See* notes 207–208, and accompanying test, *infra*.

[207] *See, e.g.*, A. Dunn, Secretary, Okla. FDA, Tx 8924.

[208] *See, e.g.*, D. Boyd, New Hampshire consumer, Tx 1690; R. Coates; Pres., Michigan FDA, Tx 3783; New York consumer complaint, VII–104; B. Kronman, A Death in the Family: A Guide to the Cost of Dying in New York City, Nassau and Suffolk (Sept. 1974). However, in some instances a wider range of prices was available . NYPIRG Ex. 6(C) (N.Y.), at 6 (cost survey reporting that least expensive caskets ranged from $70 to $385); Chenoweth, Minnesota Office of Consumer Services, 1972 Funeral Homes Study, Chi. Ex. 43, at 6–7 (Table I reporting that the cost of the least expensive caskets ranged from $67 to $220 at funeral homes surveyed).

[209] *See* discussion in Section II(E)(1), *infra*.

[210] S. Waring Treasurer, NFDA, Massachusetts funeral director, Tx 674 (containers available for $25–$35 wholesale charge); T. Sampson, Pres. Massachusetts FDA, Tx 966–67 (unfinished particle board casket offered for $50–$75, but most Massachusetts funeral directors don't stock alternative containers); M. Waterson, Minnesota funeral director, Tx 3716 (cremation containers wholesale for less than $10). *See also* A. Dunn, Secretary, Oklahoma FDA and past Pres., NFADA, Tx 8924 (pine boxes available for $65); E. Purdy, *There Must be a Better Way*, Mortuary Management, Oct. 1976, at 34; W. Kinder, President, Minnesota FDA, Tx 3303 ($50 cardboard box on display); N. Heard, NFDA, Tx 13,154 (cardboard container available for $50–$85); E. Wright Pres., South Dakota State Board of Funeral Service, Tx 4704; L. Ruffner, past Pres., Arizona FDA, Tx 7873; C. Denning, Ph.D., Neptune Society, Tx 7762–64; Humphrey Co. Advertisement, X–1–14; Cohen Statement, *supra* note 75, at 7; E. Newcomer, Progessive Mortuary Methods, March, 1976, II–A–860, at 7–8;

[211] *See* note 210, *id.*

[212] *See, e.g.*, Comments of National Selected Morticians, II–A–661, at 20.

[213] Prohibitions on requiring caskets for cremation are effective in Arizona, California, Colorado, Florida, Maryland, Minnesota, New Mexico, Wisconsin and Wyoming. CAFMS Survey of State Laws and Regulations, *supra* note 165, at Appendix III–C.

[214] The cost of a provider-imposed requirement that a casket be purchased, and the resulting consumer injury, is the same whether the form of disposition chosen is direct cremation, immediate burial, or cremation or burial after a service with the body present. At this time, however, the Commission has required that alternative containers be offered only for direct cremations. The evidence in the rulemaking record supports a finding that consumers have sought the option of employing alternative containers for use in direct cremations. *See, e.g.*, E. Purdy, Oregon funeral director, Sea. Ex. 3, at 20. There is little evidence, however, that consumers have sought out these alternatives for other forms of disposition. A distinction can be drawn between traditional burials and cremations on the one hand, and direct cremations on the other. In the former types of disposition, consumers may be able to secure alternative containers from other sources if the funeral provider they have selected does not offer them. Direct cremations, however, have much tighter time strictures, and minimize the ability to secure such a container from a third party. Immediate burials pose much the same, if not identical, problems which attend direct cremations. The record, however, is silent on whether consumers who employ this form of disposition would seek to use alternative containers. Thus, the Commission has declined at this time to extend the protections of this section to immediate burials. The Commission anticipates that where providers arrange direct cremations, and thus note the availability of alternative containers for use in direct cremations on their price lists, those containers will be offered for sale to all consumers, regardless of the type of disposition desired.

cremations, and to all crematories.[215] Some commentors in this proceeding argued that crematories should be permitted to require the use of caskets for safety-related reasons.[216] It was claimed that rigid containers facilitate the handling of the body. The rule accommodates this concern. Funeral providers and crematories are not prohibited from requiring that an unfinished wood box (which is defined as a "casket") or a rigid "alternative container" (*e.g.*, a heavy cardboard container) be purchased as a condition of arranging a direct cremation.

The requirements of this section work in tandem with the requirements of § 453.3(b) of the rule, which prohibits misrepresentations of legal or crematory requirements for purchasing a casket to obtain direct cremation services. In that section the Commission not only proscribes the making of such misrepresentations, but requires that a simple affirmative disclosure be placed on the price lists given to consumers informing them about the existence of alternatives to caskets for use in direct cremations.

The Commission has determined, however, that it is not sufficient simply to prohibit funeral directors from requiring a casket for cremation and to require a disclosure that alternatives for caskets are available. In addition, remedial steps also must be taken to ensure that, at point of sale, consumers retain the ability to decline the purchase of a casket. As we discussed above, in those situations where consumers have anticipated a death and have selected the form of disposition, pre-need comparison shopping can occur. In those instances, prohibiting funeral providers from requiring the purchase of caskets will enable consumers either to seek out a provider who makes alternative containers available, or to make the necessary arrangements to purchase such a container from a third party for use at a funeral home which does not offer them for sale.

As indicated previously, however, many consumers choose a funeral home without obtaining prior information about prices and offerings, some because they have a limited choice, and others for a variety of reasons previously noted. Given the tight time strictures surrounding a direct cremation and the fact that consumers will not remove the body of a deceased from the provider who first acquires possession, a simple prohibition on required purchases of caskets and a disclosure of the availability of alternatives may be insufficient to ensure that consumers do not have to, *de facto*, purchase a casket. For example, a funeral provider might not require the consumer to purchase a casket, but if the provider only sells caskets, consumers must either forgo their desire to employ a direct cremation without a casket, or purchase the only available container—a casket.

The Commission therefore finds it necessary to adopt the remedial requirement, found in § 453.4(a)(2), that funeral providers who arrange direct cremations make unfinished wood boxes or alternative containers available for such services. The rule provision adopted by the Commission does not require funeral providers to maintain an inventory of alternative containers. Rather, the rule requires that providers *make* available either a simple wood box, or some form of alternative container. This distinction is an important one, because it significantly reduces any burden which the provision might otherwise impose. Funeral providers need not maintain a current inventory of alternative containers. Rather, they need only be able to secure one such container, on request, and make it available for use in a direct cremation. Moreover, to the extent that some providers might, because of geographic location or other considerations, feel compelled actually to stock an alternative container, the evidence indicates that containers are available which, because of their construction or size, can be easily stored.[217]

It should be stressed that the rule does not require funeral providers to make a range of alternative containers available to consumers. The rule permits the funeral provider to offer any alternative container for sale—wholly within the discretion and business judgment of the provider. Indeed, in lieu of offering an alternative container, a provider can opt to offer only a plain wood box, which is a form of a casket.

3. *Section 453.4(b)—Other Required Purchases.*—(a) *Evidence.* The record reveals that most funeral providers, in excess of 65%, do not sell their goods and services on an itemized basis.[218] Rather, the industry norm is to offer complete "package funerals" for sale, with all of the items included in the packages having been preselected by the funeral provider.[219] While some industry members reduce the price if the buyer does not want a part of the package, if asked, many funeral providers do not reduce the price of a package funeral even where a consumer asks to have items dropped from the package.[220] By "bundling" all of the preselected goods and services together, the funeral provider is effectively forcing the consumer to buy items he or she doesn't want as a condition of providing a necessity that only he can provide: Disposition of the body. This injury cannot be reasonably avoided. As previously noted, even if the person arranging the funeral is dissatisfied with the terms of this offer, once the funeral home has taken possession of the body, for all practical purposes the consumer will not go somewhere else.[221] The evidence suggests that a significant number of consumers are required to pay the full package price, and that many are thereby required to pay for items they do not want or use.[222]

In weighing this injury to consumers, the Commission must also consider any countervailing benefits that such packaging might create. The only significant benefit advanced by funeral providers is that packaging permits the funeral director to offer lower prices to consumers. That arrangement is considered in detail in Section V(B)(4), *infra*. There, the Commission finds that, while itemization presents opportunities for funeral directors to raise prices, packaging does not inherently permit lower prices for consumers. Therefore, the Commission finds that the injury to consumers is not offset by any savings made possible by packaging.

The Commission also notes that the major trade associations recognize the basic unfairness in requiring buyers of

[215] *See* Section II(E)(3) and (4), *infra*.

[216] *See* B. Bruce, Past Pres., CANA, Tx 10,708–09. CANA crematories require a rigid, opaque, and safely combustible container. *Id.* at Tx 10,689–90.

[217] *See* 1978 Staff Report, *supra* note 9, at 245.

[218] *See* Section II(A)(2)(b) at note 75, *supra*.

[219] *Id.*

[220] *See* discussion in Section II(A)(2)(b), *supra*, and note 76.

[221] *See* discussion in Section I(E), *supra*. Further, for those consumers served by only one funeral director, which may be nearly one in four, there is no other place to go. And nearly 70% of all funeral homes have less than 4 competitors, suggesting that the choice may be limited in any event. *See* note 114, *supra*.

[222] Evidence of consumers being aware that they were required to pay for items they did not want comes from consumers complaints from across the country, (*see, e.g.*, the following complaints in category II–B: 54, 164, 366, 496, 528, 829, 1048, 1108, 1266, 1404, 1486, 1893, 1967, 1984, 2003, 2013, 2034, 2240, 5967), testimony (S. Ross, Tx. 5274–75; Msgr. R. O'Keefe, Arizona St. Bd. of Funeral Directors and Embalmers, Tx. 7064–7065); and surveys (Cohen, D.C. Ex. 39 [20 out of 101 respondents reported paying for services, merchandise, or facilities they didn't want]; Blackwell Survey, *supra* note 59 [3.7% reported paying for services they did not want]). For a number of reasons discussed in the text, *infra*, these results probably underrepresent the number of consumers who bought items that they would not have bought had they been aware of their prices and the fact that they were optional.

funerals to purchase items that they do not want. Both associations take the position that consumers are entitled to a "reasonable adjustment" of the package price when the consumer asks if credits are available for unwanted items.[223] While the problems with that industry position have been discussed above,[224] the industries view seems to confirm that refusing to give any discount for unwanted items takes unfair advantage of funeral purchasers.

(b) *Rule Provisions.* Accordingly, in § 453.4(b) of the rule, the Commission finds that it is an unfair act or practice in violation of Section 5 for funeral providers to require that consumers purchase unwanted goods and services, as a condition of obtaining those which they do want. Section 453.4(b)(2), requires funeral providers to place a disclosure on the general price lists which they must deliver to consumers, informing them of their option to make an itemized selection of goods and services with certain exceptions discussed below. The disclosure imposes the legal requirement that selection be permitted on an itemized basis.

After the effective date of the rule, it will be an unfair act or practice for any funeral provider to require consumers to purchase goods or services which they do not wish to purchase. This does not mean, however, that funeral providers will not be prohibited from offering prearranged packages for sale. So long as they comply with the required form of itemized pricing, and permit consumers to select from those itemized lists, providers may, *in addition,* continue to offer packaged funerals for sale. Consumers may continue to select these packages if they desire to do so. The rule simply prohibits the imposition of packages by the provider.

There are several important exceptions to this general right to select requirement. First, consumers may not decline the basic services of the funeral provider.[225] Irrespective of the combination of goods and services which a consumer may choose to select, the very process of selection itself will involve use of the funeral provider's services. Accordingly, the Commission has made the services of the funeral provider non-declinable. This may be done in one of two ways. On the general price list, which informs consumers of their general right to select goods and services on an itemized basis, the funeral provider must disclose either that: (1) The service charge will be added to the cost of the goods and services; [226] or (2) the service fee has been added to the casket price.[227]

The second major exception to this provision concerns embalming. As we discuss in the next section, the selection of certain forms of disposition, primarily those with a viewing, makes embalming a practical necessity.[228] Thus, funeral providers are permitted to require that embalming be selected by a consumer for all dispositions other than direct cremation and immediate burial.

Third, the Commission also was concerned that § 453.4(b) might be viewed as preventing funeral providers from refusing to deal with consumers who make impractical or idiosyncratic purchase requests.[229] Consequently, the Commission has added a provision in § 453.4(b)(2)(ii) which indicates that the rule does not force funeral providers to comply with a request for a combination of goods which would be impossible, impractical, or excessively burdensome to provide.[230]

It is the Commission's judgment that the remedies it has selected in § 453.4(b) are the least intrusive remedies which will serve to correct the pervasive abuses documented in the record.[231] In the Commission's view, the remedies chosen bear a close relationship to those abuses. Thus, the Commission has not prohibited funeral providers from selling their goods and services in prearranged packages if those sellers view the alternative as desirable in their business judgment. Rather, the rule only prohibits them from imposing that determination on the consumer, in view of the unique characteristics of the funeral transaction.[232]

D. *Section 453.5—Services Provided Without Prior Approval.*—(1) *Description of the Evidence.* The record shows that funeral directors customarily embalm a body without obtaining express authorization from the family to do so. Support for this finding comes from testimony of individual funeral directors stating that they do not attempt to obtain authorization from the family prior to embalming,[233] testimony

[223] *See* note 78, *supra.*

[224] *See* Section II(A)(2)(b), *supra.*

[225] *See § 453.2(b)(4)(iii)(C).*

[226] Section 453.2(b)(4)(iii)(C)(aa).

[227] Section 453.2(b)(4)(iii)(C)(bb).

[228] *See* Section II(D), *infra.*

[229] The Commission therefore specifically asked for comment from interested parties on the question of whether the rule provisions could be reworded to avoid creating technical rule violations in the case of aberrant selections, without vitiating the goals of the rule's itemized selection provisions. *See* 46 FR 6981 (Jan. 22, 1981) (Question 9). Few comments were received. Of those comments, none provided the Commission with any evidence that such idiosyncratic selection behavior either has occurred in states requiring itemization, or would be likely to occur.

[230] For example, the Commission would not consider it a violation of § 453.4(b) for a funeral provider to refuse doing business with a consumer who said "We have our own casket, transportation, flowers, etc., but wish to use your viewing facilities for two hours next Monday." The Commission wishes to stress, however, that this provision does not give funeral providers the option to reject arrangements which are practical to provide but which do not comport with the provider's judgment of what is appropriate under the circumstances.

[231] *See* Section II(A)(3)(g), *supra,* for a discussion of the legal standards applicable to remedial requirements in Commission rules.

[232] The rule does not affect, of course, other rights that the funeral director may have under law to refuse to deal with certain consumers or certain requests. Section 453.4(b)(2)(ii) is only intended to clarify the extent of obligation which may be created by the operation of § 453.4(b)(2).

[233] W. Rill, Pres., Washington FDA, Tx 5563; F. Noland, Pres., Idaho FDA, Tx 5836; J. Page, California mortician, Tx 7373; D. Deaton, Chairman, Alabama Funeral Service Board, Tx 9986; L. Ruffner, past Pres., Arizona FDA, Tx 7851; N. Heard, Pennsylvania funeral director, Tx 13,150; M. Chabot, Minnesota funeral director, II–C–66; R. Mee, former owner of Wisconsin Casket Co., III–F–16; T. Kimche, Oregon funeral director, Tx 5388; R. Myers, Chairman, Utah Funeral Directors and Examining Board, Tx 8284; A. Dunn, Oklahoma funeral director, past Pres. NFDA, Tx 8922–23; C. Austin, Kentucky funeral director, II–A–6; F. Galante, New Jersey funeral director and past Pres., NFDA, Tx 1741; V. Polli, Sec.-Treas., Vermont Funeral Directors and Embalmers Assoc., Tx 2197–98; B. Hirsch, Vice-Chairman, Pennsylvania State Board of Funeral Directors, Tx 12,533; A. Nix, Pennsylvania funeral director, Tx 12,926–27; N. Greene, member, Virginia Board of Funeral Directors and Embalmers, Tx 14,186.

[234] R. Johnson, Indiana funeral director, Tx 12,595; R. Shackelford, Tennessee funeral director, Tx 8987; J. Kaster, Texas State Representative, Tx 6119; N. Gregory, former California funeral director, Tx 8666; S. Waring, member, Massachusetts FDA, Treas., NFDA, TX 665; R. Thompson, member, Connecticut State Board of Examiners of Embalmers and Funeral Directors, Tx 2034; Dr. E. Jindrich, Coroner, San Rafael, Calif., L.A. Ex. 28.

[235] CFDA, FTC and You, Questionnaire Results, L.A. Ex. 23 California Funeral Directors Association survey revealed that half of the funeral directors responding do not obtain permission for embalming); S. Chenoweth, Director, Minnesota Office of Consumer Services, II–C–51, at 5–6; H. Sandhu, Pres., The Memorial Association of Central New Mexico, Inc., II–C–1280; F. Schneier, Yale student's survey, Schneier, Ex. 1 (N.Y.), at 3; 1972 Study on Funeral Homes by Minnesota Office of Consumer Affairs, Chi. Ex. 43, at 36 (14 of 33 funeral homes surveyed embalm automatically upon arrival of the body).

[236] *See, e.g.,* consumer complaints in category II–B (423, 536, 1107, 1156, 1206, 1302, 1862, 2038, 5055), in category X–1 (108) and testimony (Tx 1419, 9256).

[237] O. Matthews, Maryland Citizens Consumer Council, Tx 14,054; H. Drinkwater, Education Director, Hanover Consumer Cooperative Society, II–C–968; T. Pearson, Memorial Society of New Hampshire, N.Y. Stmt. at 6.

[238] Fuller, *State Study Assails Some Funeral Home Actions,* Minneapolis Tribune, Jan. 7, 1973, at 1A, attached to VI–D–14; S. Chenoweth, Director, Minnesota Office of Consumer Services, Tx 3121–22; New York Temporary State Commission on Living Costs and the Economy, Hearings, Practices of the Funeral Industry, Oct. 17, 1974, VI–D–1, at 15; Investigation by the New York State Temporary Commission on Living Costs and the Economy into the Practices of the Funeral Industry in the State of New York, VI–D–16, at 16.

[239] N. Dunlop, Memorial Society of Maine, II–B–11; E. Lohof, Memorial Society of Montana, II–C–63; R.

of funeral industry trade association representatives and state licensing board representatives,[234] informal surveys of morticians in various parts of the country,[235] individual consumers,[236] consumer group representatives,[237] state agencies,[238] memorial societies,[239] and consumer surveys.[240]

Indeed, while some funeral providers testified to the contrary,[241] the industry acknowledges that express prior permission is not usually sought. Instead, embalming is considered to be a negative option; the consumer must affirmatively state that embalming is not to be done or the process will be automatically performed.[242] The funeral industry contends that funeral directors receive implied permission to embalm from the authorization to pick up the body.[243] Authorization to embalm is also inferred from circumstances, such as from having handled the funeral of another member of the family in question in which embalming was requested [244] or from general authorization "to take care of the preparation" without any specific mention of the embalming process.[245]

The evidence reveals that, contrary to the funeral industry's assumption, a substantial portion of consumers do not in fact intend to authorize embalming by giving the funeral director limited authority to pick up the body.[246] While a precise estimate is not possible, surveys conducted by both industry and consumer groups suggest that a substantial number of funeral consumers would decline embalming if offered an informed choice.[247] This group would include those who object to embalming on a personal or religious basis, as well as many others who simply desire a less elaborate or less expensive funeral service.

Some caution is warranted in projecting what percentage of consumers would actually decline embalming when making an informed choice. It is possible that some consumers who indicate in the abstract that they would decline embalming might actually purchase such services in order to arrange a funeral with a viewing or visitation. Nonetheless, as the limited purchase data show, a substantial number of consumers do decline embalming when presented with the option in a real purchase situation.[248]

While some consumers may not be injured if a funeral director embalms without obtaining authorization,[249] many other consumers suffer substantial economic and emotional injury from unauthorized embalming. In terms of the economic injury, there is a charge for embalming, ranging from $50 to 150,[250] which a consumer interested in a simple, direct or less expensive disposition might not wish to spend. Beyond the actual charge for the service itself, embalming is a necessary predicate to selling techniques which encourage the purchase of higher priced goods and services. Embalming is a practical necessity if there is to be a viewing and an open casket funeral service which normally requires the purchase of a casket, burial clothes, and other servicesand facilities of the funeral home.[251]

Unauthorized embalming may result in substantial emotional injury to the family of the deceased, as well. For some funeral purchasers, personal convictions may dictate that embalming is not appropriate. For others, embalming may be incompatible with religious beliefs. Orthodox Judaism, for example, forbids embalming as a desecration of the body.[252] A funeral director who has performed embalming without prior approval has inflicted substantial, irremediable emotional injury upon the survivors of the deceased. That the funeral director may voluntarily forego his or her embalming

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Haynes, Memorial Society of Eastern Oklahoma, II–C–1230; A. Stensland, Board Member, Minnesota Memorial Society, Chi. Ex. 6, at 2.

[240] P. Sperlich, Ph.D., CalCAG, Tx 7410. The study indicated that "where respondents did not ask for embalming, embalming took place in 98% of the cases * * *". The study also found that 69.6% of 400 respondents said they received embalming but did not ask for it. In the midwest, an informal mail survey conducted by the *Louisville Times* found that the question of embalming was not even raised by funeral ddirectors in approximately two-thirds of the instances. *Cashing in on Grief? Study Reveals Little Exploitation*, The Louisville Times, July 19, 1976, at 6, col. 1, D.C. Ex. 34, *See also* Cohen Statement, *supra* note 75, at 4 (30% of those interviewed said embalming was performed before the funeral director spoke to them about embalming).

[241] Several providers indicated that they did not embalm without permission and expressed doubt about how widespread unauthorized embalming is. G. Primm, New York funeral director and Pres., Empire State FDA, Tx 271; L. Jones, Pres., NFDMA, Tx 9810; A. Juska, Vice-Pres., New Jersey FDA, Tx 2481; R. Miller, Exec. Sec., NFDMA, Tx 3612; M. Waterston, Minnesota funeral director, Tx 3736; H. Coates, member, Kentucky State Board of Embalmers and Funeral Directors, Tx 3965; M. Damiano, past Pres., New Jersey FDA, Tx 1309; P. Farmer, New Jersey funeral director, Tx 2315–18; G. Buell, Oregon funeral director, II–A–765, at 1; M. Russell, Oregon funeral director, II–A–762, G. Heller, Ohio funeral director, II–A–286; S. Fulford, Georgia funeral director, II–C–730. Others felt such a practice would be unfair and even "grossly unethical." J. Broussard, counsel and Pres., Texas FDA Tx 9351; R. Hodge, Sec., New Jersey State Board of Mortuary Science, Tx 2058; M. Damiano, past Pres., New Jersey FDA, Tx 1299; C. Hite, Dean, Simmons School of Mortuary Science, Tx 1523.

[242] According to National Selected Morticians, one of the two major trade associations: Preparation and preservation of a dead human body are standard procedures in funeral service unless there are instructions to the contrary during the initial death call because of religious beliefs or known requests for immediate disposal. Comments of NSM, II–A–661, at 21.

[243] For example, the President of the New York Funeral Directors Association testified that funeral directors often assume the authority to embalm simply because the services of that provider were retained: There has always been an inherent assumption when a funeral director was engaged by a family for one of its members that all necessary authority flows from that engagement. J. Curran, Pres., New York FDA, Tx 90.

Indeed, basic textbooks used in mortuary school instruct that turning a body over to a funeral home authorizes embalming. L. Frederick and C. Strub, The Principles and Practice of Embalming 191 (1967) states: the act of handing over a dead body * * * carries with it an implied permission to embalm that individual.

But see H. Raether and R. Slater, The Funeral Director and His Role as A Counselor (1975). In this book by Howard Raether, Executive Director of the National Funeral Directors Association, and Robert Slater, Director of the Department of Mortuary Science, University of Minnesota the authors advise funeral directors to seek explicit permission to embalm.

[244] J. Proko, past Pres., Wisconsin FDA, Tx 4148.

[245] R. Thompson, Sec., Connecticut State Board of Examiners of Embalmers and Funeral Directors, Tx 1982–83; Anderson, Pres., Utah FDA, Tx 6145; B. Hirsch, Vice-Chairman, Pennsylvania State Board of Funeral Directors, Tx 12,533.

[246] In the consumer complaints set out in note 236, *supra*, the consumer typically complained that by the time he or she reached the funeral home, often only shortly after the death, the embalming had already been performed.

[247] *See, e.g.*, Blackwell Survey, *supra* note 59. (NFDA-sponsored survey of 400 consumers found that only 9.5% of respondents would decline embalming in an "average" funeral home, 25% were undecided, and 60% would not decline embalming). In one study, 88.1% of respondents had embalming when they were unaware that embalming was not legally required while only 58.5% of respondents who knew embalming was optional had embalming done. Sperlich, CalCAG, L.A. Ex. 17.

[248] D. Daley, Seattle funeral director, Tx 5933 (funeral home which presents embalming as true option reports 30% declination rate); CAMP Survey, *supra* note 92 (less than half of those who had purchased embalming expressed a preference for it).

[249] *E.g.*, consumers who would have chosen a funeral in which embalming is required as a practical necessity or those who would have been required by law to embalm.

[250] J. Lyon, Washington consumer, II–B–1100; *House Small Business Subcomm.* (Part III), *supra* note 30, at 91, 329; Funeral Prices, Pricing Policies and Procedures in Florida, VI–D–6, at Question 13; Arkansas Attorney General Study, VI–D–12, at 5; Delaware Consumer Affairs Survey, VI–D–9, at 2; R. Mee, former Wisconsin funeral director, III–F–16.

[251] Recent editions of a basic textbook on the subject state that embalming is the "basis for the sale of profitable merchandise." L. Frederick & C. Strub, The Principles and Practice of Embalming 2 (1967). Another reference book puts it in the following way: "The foundation of the funeral service profession is embalming and the basis of financial profit is merchandising." E. Martin, The Psychology of Funeral Service viii (1970).

[252] *See* M. Tendler, New York, Rabbi, Tx 855; E. Grollman, Massachusetts Rabbi, Tx 830; A. Schneider, New York Rabbi, Tx 1009; S. Applebaum, New York Rabbi, Tx 1049; Comment of the Washington Board of Rabbis, D.C. Stmt. at 4–5.

fee is likely to be of little or no consolation to the family.

The Commission finds that unauthorized embalming results in substantial consumer injury, both in economic and non-economic terms. The test for unfairness, however, requires that the Commission balance against the harmful effects of conduct, the benefits which may flow from the practice in question. In essence, the unfairness of a practice must be measured by its net effects. Funeral providers have advanced two arguments to support "routine" embalming or embalming predicated on general expression of authority: First, embalming is virtually always desired by funeral consumers; and second, the subject of embalming is repulsive to people and therefore it would be offensive to ask a family about embalming. The record demonstrates, however, that many consumers do not in fact want embalming and would decline it given an option, and that many consumers do not give permission to embalm by authorizing the funeral director to pick up the body.[253] Given consumers' lack of prior experience and knowledge, it is unreasonable to expect that consumers will affirmatively decline embalming in the first telephone contact with the funeral home.

The response to the second argument is twofold. First, evidence suggests that many if not most consumers would not be uncomfortable in giving express permission to embalm. Two surveys of consumer attitudes found that four out of five consumers favor the idea of requiring funeral directors to obtain embalming permission.[254] In addition, the numerous consumer complaints received on the subject of embalming suggest that funeral purchasers are able and willing to address this subject. Furthermore, several funeral director witnesses testified that the subject of embalming did not offend their consumers.[255]

Second, and perhaps more fundamental, the speculative concern of funeral providers that some consumers will be offended by the simple question "May we embalm?," is simply not a justifiable basis for refusing to ask the question at all, thereby imposing the expense of embalming on that segment of the population that would decline if asked.

The Commission finds that consumers cannot readily avoid the harm caused by this practice, since it often occurs at the point of initial contact with the funeral home. To protect themselves from this harm, consumers would have to know that they must affirmatively instruct the funeral provider not to embalm at the moment the pick-up call is placed, or else embalming will be performed. Such knowledge is highly unlikely, given consumers' lack of prior experience with arranging funerals. Further, as discussed in Section II(B)(2)(a), *supra,* the evidence shows that many consumers believe that embalming is legally required and that they may have no choice.

Charging a buyer for goods or services which the buyer did not agree to buy plainly violates established principles of public policy found in fundamental levels of contract law. The common law insists on mutual consent for there to be a binding contract.[256] While consent may be reasonably implied in some circumstances, courts have also made it clear that acceptance cannot be implied where the offeror knows, or should have known, that the offeree does not understand the terms of the offer. In such cases, clear expressions of acceptance are required.[257] For that reason, the Commission and Congress have, in other contexts, reined in marketing schemes which relied upon unknowing or ambiguous consent on the part of consumers.[258] In addition, seven states have enacted provisions which specifically require funeral directors to receive express permission before embalming,[259] confirming the conclusion that such practices are unjustifiable and injurious.

(2) *Rule Provisions.* Accordingly, § 453.5(a) of the rule defines it as unfair for any funeral provider to embalm a deceased human body for a fee without prior approval from a family member or other authorized person, except in certain unusual circumstances.

In determining which practices to proscribe in the rule, however, the Commission is cognizant of the fact that in virtually all instances where disposition does not occur within a very short time span, (*e.g.,* 24 hours) either embalming must be performed or the body refrigerated to delay decomposition. Concerns were raised in the rulemaking proceeding that if prior approval for embalming were required, funeral providers would be unable to embalm in those situations where the family or legal representative of the deceased could not be immediately contacted. Unless embalming were performed, it was argued, decomposition would begin thereby precluding the possibility of a traditional funeral.[260]

The Commission recognizes that the majority of consumers arranging funerals, according to all survey evidence, do want embalming because of their intent to have a traditional funeral with viewing and visitation. Thus, the Commission has cast the unfair acts and practices proscribed by § 453.5(a) in the alternative. As noted above, the general rule adopted by the Commission prohibits funeral providers from embalming for a fee[261] without obtaining prior approval from the family or authorized representative of the deceased.[262] Excepted from this general rule are two situations. First, if state or local law require embalming in certain situations, such as where death has occurred from certain communicable diseases or where the body will be transported interstate,[263] the funeral provider must follow the applicable law.

Second, the provision allows for certain exigent circumstances by providing that if the funeral director is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe that the family does not want embalming performed, and obtains subsequent approval from the family, the funeral director may charge for embalming without violating the rule.[264] In seeking subsequent approval, the funeral director must first disclose that embalming has been performed, but that no fee will be charged if the family selects a funeral arrangement which would not require embalming, such as direct cremation or immediate burial. If the family then selects a funeral arrangement which would require embalming, such as a funeral with viewing, visitation, or the body present, subsequent approval may be inferred and a fee charged.

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[253] *See* discussion at note 246, *supra.*

[254] CalCAG Study, *supra* note 247, at 20; CAMP Survey, *supra* note 92, at 5.

[255] D. Deaton, Chairman, Alabama Funeral Service Board, Tx 9997; L. Jones, Pres., NFDMA Tx 9812; G. Brown, Chairman, Vermont Board of Funeral Service, Tx 12,059.

[256] *See, e.g.,* Corbin on Contracts § 55 (1963); Restatement (Second) of Contracts § 17 (1979).

[257] *See, e.g.,* Corbin on Contracts § 95, §107 (1963); Restatement (Second) of Contracts § 18 (1979).

[258] *See, e.g.,* Postal Reorganization Act, 39 U.S.C. 3009 (Prohibiting charging consumers for unordered mail merchandise); Trade Regulation Rule on the Use of Negative Option Plans by Sellers in Commerce; 16 CFR § 425 *et seq.* (1975).

[259] CAFMS Survey of State Laws and Regulations, *supra* note 165, at Appendix III–C.

[260] *See* NFDA Comments on Revised Rule, XVI–112, at 11.

[261] Section 453.5(a)(2).

[262] If the funeral director is unable to locate an appropriate family member, the rule permits the required authorization to come from a local official who has legal authority to make such a decision. This may be, depending on the circumstances and the state law, a coroner, sheriff, public health official, a judge, or one expressly authorized to direct disposition of the dead.

[263] Section 453.5(a)(1).

[264] Section 453.5(a)(3).

To help prevent a funeral director from charging for embalming in those situations where the rule does prohibit it, § 453.5(b) of the rule requires funeral directors to place a written disclosure on the final bill or agreement given to customers informing them of their right not to pay for embalming performed without prior approval unless they select a type of funeral which would require embalming. Moreover, the disclosure must state that if a fee is charged for embalming, a written explanation will appear on the final bill or agreement given to a customer.

E. *Section 453.1—Definitions.* In § 453.1, the Commission defines several terms of particular importance in the rule. Some of these terms such as "Commission," "cremation" and "person" require no elaboration. Others, which raise significant issues about the scope and coverage of the Commission's rule are discussed below. We have placed this discussion after the discussion of the substantive provisions of the rule to facilitate understanding of the issues they raise.

1. *Section 453.1(a), (c), and (o)—Definitions of "alternative container," "casket," and "unfinished wood box".* The rule defines three categories of receptacles for human remains: Caskets, alternative containers, and unfinished wood boxes. These terms are used in § 453.4(a) which ensures the consumer's right to use an alternative to a traditional casket when choosing a direct cremation. Caskets are defined generally as containers made of wood or metal, ornamented and lined with fabric. An alternative container, on the other hand, is non-metal, without ornamentation or fixed interior lining, and may be made of a variety of materials, such as cardboard, pressed wood or canvas.

The term "unfinished wood box" has been included in the rule because of a concern that what is perhaps the traditional low cost container, *i.e.*, the plain pine box, could fall within either the definition of casket or that of alternative container.[265] The Commission, therefore, has defined an unfinished wood box as a particular type of casket—one which is made of wood and without lining or ornamentation. Under the rule, an unfinished wood box is treated like an alternative container; that is, a funeral provider may satisfy the requirement in § 453.4(a) to offer an alternative to a casket for use in direct cremations by offering an unfinished wood box.

[265] *See, e.g.*, Rebuttal Comments of NCSC/ADA/CAFMS, XVII–16, at 64–68.

2. *Sections 453.1 (i), (j), and (k)—Definitions of "funeral goods," "funeral provider," and "funeral services".* The definitions of "funeral goods," "funeral provider" and "funeral services" in § 453.1 (i), (j) and (k) are critical because they define the scope of the rule's coverage. Only those persons who fall into the class of "funeral provider" are subject to the rule, and in order to do so a person must sell both "funeral goods" and funeral "services." "Funeral goods," under § 453.1(i), consist of all products sold to the public for use in connection with funeral services. Thus, the definition of "funeral services" is the core on which the definitions of both "funeral provider" and "funeral goods" are based.

Two types of functions come under the definition of "funeral services" in § 453.1(k): (1) Those services used to care and prepare human bodies for burial or other disposition and (2) those services used to arrange, supervise or conduct the funeral or disposition. Both the preparatory and the supervisory types of functions must be performed in order to come within the definition of "funeral services."

A "funeral provider" under § 453.1(j) must sell both "funeral goods" and "funeral services." In order to be classified as a "funeral provider", a person must perform both types of functions listed in § 453.1(k). A cemetery, therefore, would generally not be considered a "funeral provider" under the rule because it only arranges or conducts final dispositions. It does not prepare human remains for burial or other dispositions.[266]

3. *Sections 453.1(g) and (l)—Definitions of "direct cremation" and "immediate burial".* The rule prohibits funeral providers from requiring that consumers choosing direct cremation purchase a casket.[267] In addition, consumers choosing immediate burial or direct cremation may not be required by funeral providers to purchase embalming services.[268] The terms "direct cremation" and "immediate burial" refer to forms of direct disposition of human remains which take place without formal viewing, visitation, or ceremony with the body present.[269] The definitions of these terms do not prescribe a precise time period between death and disposition of the body, but rather refer to the lack of ceremony surrounding the cremation or burial.

4. *Section 453.1(g)—Definition of "crematory".* The definition of "crematory" in Section 453.1(g) includes only those persons, partnerships and corporations that both perform cremations and sell funeral goods. The Commission is aware that some crematories do not sell funeral goods and therefore would not fall within this definition. However, the Commission believes that § 453.1(g) is consistent with Section 19 of the 1980 Improvements Act which limits the rule's coverage to persons who sell both funeral goods and funeral services.[270]

5. *Section 453.1(m)—Definition of "outer burial container".* Burial vaults, grave boxes and grave liners are terms commonly used by funeral providers and refer to containers designed for placement in the grave around the casket. The Commission has used the single term "outer burial container" to include the various types of containers which may be used.

6. *Section 453.1(o)—Definition of "services of funeral director and staff".* This term refers to the services which may be furnished by a funeral provider in connection with the arranging of a funeral, including such services as conducting the arrangements conference or planning the funeral services. It does not include services otherwise listed in § 453.2(b)(4), such as embalming, transferring remains to the funeral home, etc.

F. *Section 453.6—Retention of Documents.* Section 453.6 of the rule requires funeral providers to retain a copy of certain documents which must be provided to consumers under the substantive provisions of the rule. Specifically, the retention of documents provision requires funeral directors to retain copies of the price lists required by the rule, and copies of each individual statement of services selected by the consumer for each funeral for a period of one year. Funeral directors would also be required to make these records available to FTC officials upon request for inspection.

The Commission's goal in adopting a recordkeeping requirement is to help ensure compliance with the substantive provisions in the rule. As part of its enforcement program, the Commission will check the records of individual funeral homes to ensure that the price lists and statements required by the rule are complete. Since most of the

[266] Of course, those cemeteries which do prepare human remains for burial would be considered "funeral providers" and therefore covered under the rule.

[267] *See* Section 453.4(a).

[268] *See* Sections 453.4(b) and 453.3(a)(2).

[269] Except perhaps for a brief graveside service in the case of immediate burial.

[270] *See* Section 19(c)(1)(A) (the Commission has authority over persons "* * * furnishing goods and services relating to funeral"), 15 U.S.C. 57a note.

information which the rule requires be given to consumers will be contained on the price lists and statement of services selected, availability of those documents for inspection will make it feasible to detect rule violations efficiently and thus to enforce the rule effectively. The recordkeeping provision will thereby deter potential violators and help prevent the unfair and deceptive practices defined by the rule.

During the rulemaking proceeding several concerns were expressed about the operation of this provision. Some of the most frequent were: (1) That the requirement was burdensome because funeral providers would be required to store large numbers of documents in order to comply with the rule;[271] (2) that the time period for retention of records was unreasonably long and should be substantially reduced;[272] and (3) that the requirement would unreasonably invade the privacy of persons arranging funerals.[273] The Commission has considered each of these criticisms and has been as responsive as possible, consistent with the goal of efficient enforcement of the rule.

When compared with the version of the rule first published for public comment in 1975,[274] the version which the Commission has now approved has a recordkeeping requirement which substantially reduces the paperwork storage burden on funeral providers.[275] In response to concerns that the period for record retention was too long, the Commission reduced the period from three years to one year. A one-year record retention period will be less useful than a three-year period in helping identify funeral providers who are engaging in a pattern of rule violations or in identifying all consumers who would be entitled to redress under Section 19 of the FTC Act.[276] The Commission has nonetheless concluded that a one-year record retention period will provide an adequate incentive for funeral providers to comply with the rule's substantive provisions and has, accordingly, revised the rule to reduce the burden on funeral providers.

The recordkeeping requirement has not been revised, however, in response to the concern that it would constitute an unwarranted invasion of the privacy of the persons arranging funerals. The Commission views this concern as unfounded. The rule does not require funeral providers routinely to submit records for examination by Commission officials. To the extent that Commission officials obtain any information from the records of funeral providers as part of an investigation, such information would be subject to the provisions of the Privacy Act [277] and Section 21 of the FTC Act,[278] which provide guarantees against unwarranted disclosure of personal information.

G. *Section 453.7—Comprehension of Disclosures.* The Commission has included a requirement in the rule that the disclosures which funeral providers must provide to consumers must be made in a manner which is clear and conspicuous. The Commission's goal is to ensure that the information provided under the rule will be presented in a manner readily discernible by consumers.

H. *Section 453.8—Declaration of Commission Intent.* In § 453.8 of the rule the Commission clarifies three issues with respect to how it interprets its rule on funeral practices. The Commission has included these statements within the rule itself rather than only in the Statement of Basis and Purpose to assist those persons who are covered by the rule in understanding the scope of the rule and the obligations it imposes.

First, the Commission declares its intent that a violation of either the definitional provisions or the remedial provisions of the rule constitutes a violation of the rule, unless otherwise stated. In each provision of the rule, the Commission first describes with particularity the acts or practices which have occurred in the past which the Commission finds to be unfair or deceptive acts or practices. Thereafter, the rule describes what remedial provisions, if any, must be complied with. This format is necessitated by the decision of the Second Circuit in *Katharine Gibbs.*[279]

An example of where a violation of either the definitional or remedial sections would be a violation of the rule is found in § 453.3 concerning misrepresentations. If a funeral provider makes the disclosure required by the rule concerning caskets for cremation (*i.e.*, the remedial provision, § 453.3(b)(2)), but continues to make false claims that the law requires a casket for direct cremation (*i.e.*, the definitional provisions, § 453.3(b)(1)), the funeral provider would be in violation of the definitional section and this would constitute a violation of the rule.

Section 453.2(a) dealing with price disclosure is the one exception to the general standard that a violation of either the definitional or remedial sections constitutes a violation of the rule. In § 453.2(a) the Commission explicity states that a funeral provider who complies with the remedial requirements concerning price disclosure in § 453.2(b) is not engaged in the unfair or deceptive acts or practices as defined in § 453.2(a).

Second, the Commission states its intent that each of the provisions of the rule are separate and severable from one another. If one or more parts of the rule are found to be invalid by a reviewing court, the Commission intends that the other portions of the rule will continue in effect.

The third issue addressed by this section concerns the effect of the rule on burial insurance and the rule's consistency with the exemptions for the business of insurance embodied in the McCarran-Ferguson Act [280] as restated in Section 5 of the FTC Improvements Act of 1980.[281] This section declares the Commission's intent that the rule be inapplicable to the business of insurance or to acts in the conduct thereof. This explicit declaration was included in the rule in response to several comments questioning the effect of the proposed rule on prearranged funerals governed

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[271] *See* Comments, Other Groups, XIV–867; Individual Funeral Industry Member, XIV–739; State or Local Agency or Official, XIV–678; U.S. Small Business Administration, XIV–819; Individual Funeral Industry Member, XIV–20.

[272] *See* Post-Record Comments, Other Groups, XIV–867.

[273] *See id.*

[274] *See* 40 FR 33901 (1975).

[275] The most significant change in this connection is the elimination of the requirement that funeral providers give to each customer (and, therefore, retain a copy) a separate "Statement of Funeral Goods and Services Selected" required by § 453.2(b)(5). The information which formerly would have appeared on the Statement may be incorporated onto the final contract, bill, or other document which the funeral provider already uses to memorialize sales agreements with customers. Since such documents would ordinarily be retained as business records or for tax purposes, the additional burden imposed by the Commission is minimal.

Two other changes in the final rule have significantly reduced the burden imposed by the recordkeeping requirement. First, as published in 1975, the rule required that funeral providers give out a separate sheet describing the legal requirements which a funeral provider claimed required consumers to purchase goods or services. Those disclosures have now been incorporated onto the price lists and statement of services selected, eliminating the need to keep separate records showing compliance with the provision. Second, the rule now permits funeral providers to consolidate certain price information onto one document, *i.e.*, the general price list. Thus, funeral providers may choose to list prices for caskets and outer burial containers on one list, rather than to prepare three separate documents.

[276] 15 U.S.C. 57b.

[277] 5 U.S.C. 552a, *et seq.*

[278] 15 U.S.C. 57b–2.

[279] *See* Section I(B), *supra*, at note 18.

[280] 15 U.S.C. 1011, *et seq.* (1976).

[281] Public Law 96–252, 94 Stat. 391.

by burial insurance.[282] The Commission's declaration of intent is included to address these concerns and clarify that the rule does not apply to such arrangements and other areas involving the business of insurance.

I. *Effect of the Rule on State Law—Section* § 453.9. In § 453.9 of the rule, the Commission has specified a process by which the states may obtain exemptions from part of all of the rule's requirements. The purpose of this section is to encourage federal-state cooperation by permitting appropriate state agencies to enforce their own state laws that are equal to or more stringent than the trade regulation rule.[283] To the extent specified by the Commission, the rule will not be in effect in a state obtaining an exemption. Otherwise, any state laws which conflict with this rule after its effective date are preempted to the minimum extent necessary to resolve that conflict.[284] The following discussion first sets out the basis for the Commission's preemptive authority and then describes how that authority affects existing state laws.

1. *Preemptive Authority.* In general, federal authority to preempt or override state law stems from the Supremacy Clause of the United States Constitution.[285] The Supreme Court of the United States has clearly established the principle that "state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause."[286] The Court has also made clear that this principle applies to federal agency regulations which have the force and effect of law as well as to acts of Congress.[287]

More specifically, the courts have recognized that federal law may preempt state laws or regulations to the extent that the federal provision requires or authorizes conduct which is inconsistent with state law.[288] This form of preemption is referred to as "conflict" or "inconsistency" preemption.[289] In *Katharine Gibbs*, the United States Court of Appeals held that Magnuson-Moss trade regulation rules promulgated by the Commission preempt inconsistent state law under traditional notions of "conflict" preemption.[290]

2. *Effect of Rule on State Law.* Every state regulates the licensing of funeral directors and funeral establishments, including such subjects as the educational, apprenticeship and examination requirements for licensees and public health standards for handling human remains. This entire area of state regulation remains intact because it does not conflict with or frustrate the purposes of the rule. The rule also specifically recognizes state regulatory limitations imposed on licensees for public health reasons with respect to embalming.[291]

Some states also have enacted certain protections for funeral consumers which appear similar to those in the rule.[292] State laws exist for example, which prohibit funeral directors from embalming remains without permission (Section 453.5(a)(2))[293] or requiring a casket for cremation (Section 453.4(a)).[294] At least one other state has enacted into law a provision which appears similar to an earlier proposed version of the rule's requirements concerning pre-selection disclosure of itemized prices.[295] Since such provisions do not conflict with the rule, they are not preempted or affected in any way. A violation of such provisions would simply be a violation of both the rule and state law.

Other states have enacted provisions which are directed at the same practices as the rule but appear not to address these problems in a manner similar to the rule. For example, several states require that funeral providers disclose their prices, but require less disclosure than would occur under the rule's itemization requirement.[296] The rule would not conflict with and preempt such regulations either, because a funeral provider complying with the rule also could comply with the more permissive state law provisions. However, in such cases, funeral directors must also comply with the additional requirements of the rule.

While the Commission is aware of no state laws which are in conflict with the rule, individual states may wish to exercise their right, under § 453.9, to exempt their laws entirely from the rule. Under § 453.9, the rule will not be in effect in a state to the extent specified by the Commission where: (1) Application for an exemption is made by a state; (2) there is a state requirement in effect which applies to any transaction to which the rule applies; and (3) the state requirement provides an overall level of protection which is as great as, or greater than, the protection afforded by the rule. If an exemption is granted, it shall be in effect only for as long as the state administers and enforces effectively the state requirement.

The Commission here offers no opinion as to whether existing state laws or regulations provide a level of protection as great as or greater than that provided by the analogous rule provisions. As set forth in § 453.9, the Commission will instead determine the appropriate relationship between the rule and state law on a case-by-case basis in the context of an exemption proceeding conducted pursuant to § 1.16 of the Commission's Rules of Practice. The Commission will evaluate appropriate petitions for exemption made by state governmental agencies to determine the overall level of protection to consumers and whether the state regulation is administered and enforced effectively. Factors which will be considered by the Commission in determining whether an exemption is warranted include such things as the means available to the state to enforce its provisions, the existence of any private rights of action by an aggrieved consumer, and the scope and format of

[282] Comments on Revised Rule, Academic Group, XVI–171, at 1; Other Groups, XVI–60, at 1.

[283] This provision is in accord with a parallel provision in Section 19(d) of the FTC Improvements Act of 1980. *See* 15 U.S.C. 57a note.

[284] The Commission is unaware of any state laws which would be preempted by the rule. *See* discussion in Section II(I)(2), *infra*.

[285] U.S. Constitution, Art. VI, cl. 2 states that: This Constitution and the laws of the United States which shall be made in pursuance thereof, * * *, shall be the supreme law of the land * * *, anything in the Constitution or laws of any state to the contrary notwithstanding."

[286] Perez v. Campbell, 402 U.S. 637, 652 (1971).

[287] *See, e.g.*, Nash v. Florida Industrial Commission, 389 U.S. 235, 240 (1967); Public Utilities Commission v. United States, 355 U.S. 534, 540–546 (1957). *See also* Jones v. Rath Packing Co., 430 U.S. 519, 526–533 (1977).

[288] *See, e.g.*, Castle v. Hayes Freight Lines, Inc., 348 U.S. 61 (1954).

[289] A federal law may also explicity preempt an entire area covered by state law, in which case the federal statute is viewed as having "occupied the field." *See, e.g.*, Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977). The funeral rule does not contemplate this type of preemption.

[290] 612 F.2d at 667. At issue in that appeal were provisions of the Commission's Vocational School Trade Regulation Rule (16 C.F.R. Part 438) which imposed obligations on private parties that conflicted with the requirements imposed by the states.

[291] *See* Sections 453.3(a)(2)(i) and 433.5(a)(1).

[292] *See* 1978 Staff Report, *supra* note 9, at 123, n. 85 and accompanying text.

[293] *See, e.g.*, Wash. Rev. Code Ann. § 19.39.215 (1982 Supp.); Ind. Code Ann. (Burns 1982) § 25–15–1–11.1(b)(14); and W. Va. Board of Embalmers and Funeral Directors, Rules 10 (A) and (C).

[294] *See, e.g.*, Md. Ann. Code art. 43, § 367A (Supp. 1981); Minn. Stat. Ann. § 149.09(3) (West Supp. 1978).

[295] Fla. Stat. Ann. § 470.035 (West 1979).

[296] For example, most states only require a written agreement; they do not require price lists. The written agreements usually may be in the form of a single (package) price for all of the funeral homes customary charges, with separate prices only for cash advance items and supplemental items. *See* "CAFMS Survey of State Laws and Regulations," *supra* note 165, at Appendix III–C. Any funeral provider itemizing to comply with the rule also would provide the disclosure required by these states.

required price disclosures to funeral consumers.

Only state governmental entities may request exemptions from the Commission's rule under § 453.9. Funeral providers may not use this process. The determination to grant an exemption to state law will necessarily place the primary enforcement burden back onto the state to enforce its provision. Such a decision should be made solely by the state entity involved.

III. Alternatives Considered

During the course of this proceeding the Commission carefully considered several alternatives to the final rule ultimately adopted by the Commission. These options fall into three general categories: (1) Alternatives to the adoption of any rule; (2) specific rule provisions which were ultimately rejected by the Commission in any form; and (3) variations of rule provisions which were included in the final rule. The most significant of those alternatives considered which fall into the third category have been discussed in Part II of this Statement.[297]

The alternatives to the adoption of any final rule which were considered by the Commission include: (1) Taking no action; (2) issuing a nonbinding industry guide; and (3) issuing a model state law for consideration by the states. The alternative requirements which the Commission considered but did not include in the final rule were: (1) Prohibiting funeral providers from removing the remains of a deceased without authorization, or refusing to release the remains of the deceased; (2) prohibiting funeral providers from employing certain techniques and sales practices to steer consumers away from inexpensive funeral merchandise; (3) prohibiting funeral providers from engaging in concerted activity through threats or boycotts aimed at other funeral providers; and (4) permitting funeral providers to use a form of package pricing with declination credits in lieu of itemized pricing. Each of these alternatives will be discussed below.

A. *Alternatives to Any Commission Rule.*—1. *Take No Action.* Throughout the course of the funeral rule proceeding, one option considered by the Commission was that of taking no action, *i.e.*, terminating the proceeding without issuing a rule or other guidelines. This approach would essentially have maintained the status quo. Thus, the principal benefit of adopting this option is that it would impose no compliance costs on funeral providers, since they could continue their existing practices without change. In addition, this course would not have required the expenditure of any funds to enforce a rule.

The Commission has concluded, however, that these benefits are substantially outweighed by the costs to consumers arising from the unfair and deceptive practices currently engaged in by funeral industry members, costs which would continue unabated if the status quo were maintained in this market. The practices described in detail in Section II of this Statement cause consumers to pay higher prices for funeral goods and services because funeral providers are insulated from the need to set prices competitively, and cause consumers to purchase and pay for items which funeral providers misrepresent as being required by law or cemetery regulations. These and other practices prohibited by the rule result in substantial injury to consumers, injury which can be eliminated at minimal compliance costs under the provisions of the rule.[298] The Commission has concluded, therefore, that there will be a significantly greater net benefit to society if it issues the rule than if it takes no action.

2. *Rely on Industry Guides.* Under this option, the Commission would issue voluntary trade practice guides instead of a binding rule. This option was first considered by the Commission in 1976, when two industry trade associations petitioned the Commission to convert the rulemaking proceeding into one for the consideration of guides.[299] The Commission rejected this petition, declining to decide what type of action, if any, was warranted until it had an opportunity to review the evidence in the rulemaking proceeding and make findings based on that evidence.[300]

In passing the FTC Improvements Act of 1980, Congress permitted the Commission to issue a funeral rule but specifically encouraged the Commission to consider whether the goals of the rule could be achieved through voluntary guidelines.[301]

After reviewing the rulemaking record, the Commission has concluded that voluntary industry guides are not an appropriate solution to existing problems. If guides containing the rule's substantive provisions were adopted and complied with by the industry, essentially the same compliance costs would be imposed on the industry as would be imposed by the promulgation of a rule. The major "benefit" in such an instance would be the public savings which would accrue from not having to expend resources to enforce a rule.[302] Adoption of this approach, however, would not ensure that funeral providers would comply with the guides, and the benefits to consumers would be reduced by non-compliance. Clearly, if all providers complied with guidelines, consumers would receive the same benefits that the rule will provide. There is no assurance, though that voluntary guides would substantially alter the business practices of this market, since comments by industry members on the rulemaking record clearly show that there is no consensus among funeral providers on the need to revise their current sales techniques.[303] It is the Commission's judgment that voluntary guides, absent such a consensus, would not be complied with by significant numbers of funeral providers.[304] The guides would, therefore, not provide the net benefits to consumers which would be provided by issuance of a rule.

Guides might also offer the benefit of some flexibility, giving opportunities for experimentation with, among other things, different disclosure formats. Given the lack of industry consensus on the basic issue of the fairness of several major industry practices, however, this approach does not seem practical.

3. *Rely on State Action to Correct Abuses.* A third approach to correcting funeral industry abuses would be to await action at the state level, rather than to issue a federal rule. This alternative has been suggested repeatedly during the rulemaking proceeding, usually in conjunction with the expression of beliefs that existing state regulation is adequate to correct

[297] *See* Section II, *supra.*

[298] The benefits and costs of issuing a rule are described in some detail in Section IV, *infra* (Benefits, and costs, and Other Effects of Rule Provisions). The reasons why existing practices cause consumer injury are described in detail in Section II, *supra.*

[299] Petition of National Selected Morticians, I–A–22. The petition was joined by the National Funeral Directors Association.

[300] Letter from Charles A. Tobin to David D. Murchison, Attorney for National Selected Morticians (April 10, 1976). *See* Binder 215–46–1–1.

[301] Statement of Congressman Broyhill, 126 Cong. Rec. H3859 (daily ed. May 20, 1980).

[302] This savings would be offset somewhat, however, by the costs attributable to guideline self-enforcement by industry members. In light of this, the Commission has concluded that there would not be a significant reduction in net enforcement costs to society if the guides are enforced actively.

[303] *See, e.g.,* Summary of Post-Record Comments on Funeral Industry Practices rule, XV, at 160–164 (comments in opposition to mandatory itemization).

[304] The result might be to give an unfair competitive advantage to funeral providers who chose not to comply with the guidelines.

whatever abuses might exist.[305] A proposal to the Commission by several major industry trade associations in 1980 also reflected preference for state level regulation. That proposal consisted of a set of model laws which the proposers suggested be issued by the Commission for voluntary adoption by the states.[306]

The Commission recognizes that state action to correct existing industry abuses, if such action were taken, would have significant benefits over regulation at the federal level. First, it would allocate all funeral industry regulation to one level of government (*i.e.*, the state), potentially allowing economies in the cost of enforcing regulations. Second, it would simplify the compliance burden on funeral providers, by giving them a single source of guidance for answers to their questions about their regulatory obligations. Third, state regulators should be able better to keep abreast of non-compliance in local areas than the Commission, and thus should be better able to enforce rule provisions with maximum effectiveness.

The Commission is concerned, however, that state regulation in the past has not addressed the problems which the Commission's rule is designed to correct. A review of state law submitted to the Commission in 1976 [307] and another review conducted in 1980 [308] indicate, while there has been some improvement at the state level since the proceeding commenced, that most states have not moved to enact requirements comparable to those which the Commission is adopting, particularly in the area of price disclosure.[309] The failure of state funeral licensing boards to enact regulations requiring itemized price disclosure is not surprising, given the fact that most state licensing boards are dominated by funeral directors who are likely to share the traditional view of the major trade associations that package pricing is a perfectly permissible practice.[310] Reliance on state laws would, therefore, not fully correct the significant problems identified in the record in this proceeding. Nor is there any evidence that states will be likely in the near future to enact such provisions. The Commission thus rejects the notion that promulgation of any rule should be delayed pending action by the states. The effects of current industry practices on funeral consumers are sufficiently serious that action is warranted now.

It should be noted, however, that the rule provisions presently being adopted by the Commission can serve as a model state law. Where states act to pass laws which meet the minimum level of protection for the funeral consumer established by the rule, states may secure exemptions from the operation of the rule. Section 453.9 of the rule establishes criteria which, if met, would enable states to obtain exemptions from the rule.[311] Once the exemption is received, the Commission's rule will not be in effect in that state as long as the criteria continue to be met.

B. *Alternative Rule Provisions.* The version of the funeral rule published in the initial notice of rulemaking contained four sets of provisions which the Commission has considered and decided not to incorporate in the final version of the funeral rule. Those provisions are described here, with an explanation of the Commission's reasons for deciding against their issuance.

1. *Unauthorized Removal of Remains and Refusal to Release Remains.* In the rule originally proposed by the Commission, funeral providers would have been prohibited from obtaining custody of deceased human remains without permission from a family member or other legally authorized person. They also would have been required to release remains to a family member or other legally authorized person upon request, whether or not they were owed money for services provided.[312] Both provisions were proposed to address practices which take advantage of consumers' strong reluctance to move a body once it is in a particular funeral home, even if the consumer might prefer to do business with a different funeral provider.[313]

In recommending that the Commission prohibit the unauthorized removal of remains from the place of death, the rulemaking staff cited instances in which funeral providers acquired possession of a body from a hospital or nursing home without permission from the relatives, obtained a body because the provider also served as the coroner, or because a provider misinterpreted a call for information as authorization to pick up the body.[314]

The prohibition on unauthorized removal of remains was intended to ensure that the funeral provider who received the body initially was one who was acceptable to the family or their representative. The prohibition on refusal to release remains was intended to ensure that a funeral director could not prevent dissatisfied customers from moving the body to a competitor, should they so desire.

The Commission has concluded, however, that the practices described above are not widespread and that there are sufficient safeguards in state law to protect consumers for these practices. Unlike other practices addressed by the rule, these practices are widely condemned by the industry and contrary to law in most states.[315] They are the type of conduct which consumers are likely to complain about, and consequently trigger state enforcement action. Barring such practices in the rule would contribute little, if anything, to deterring such conduct. Consequently, in

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[305] *See, e.g.*, Summary of Post-Record Comments, XV, at 125–29 (adequacy of existing state regulation).

[306] Proposed "Guides" [model law] and transmittal letter (Oct. 8, 1980), VI–7.

[307] *See* Consumer Federation of America, State Statutes, Rules and Regulations Affecting Funeral Practices, Atl. Ex. 7 (1976).

[308] *See*, CAFMS Survey of State Laws and Regulations, *supra* note 165, at Appendix III–C. The CAFMS study is based, in part, on a survey of state laws conducted by the rulemaking staff in 1980 and submitted for the record in *Funeral Industry: FTC Proposed Rulemaking: Hearings Before the Subcomm. on Oversight and Investigations of the House Comm. on Interstate and Foreign Commerce*, 96th Cong., 2d Sess. 141–144 (1980).

[309] *See* text and accompanying note 95, *supra*.

[310] Until recently, virtually all of the state licensing board members were licensed funeral directors. Consumer Federation of American, State Statutes, Rules and Regulations Affecting Funeral Practices, Atl. Ex. 7. In the last several years, the Conference of Funeral Service Examining Boards has been encouraging the appointment of "lay" members to funeral boards. As a result, most state licensing boards now have "lay" representatives, although only two states have licensing boards where funeral directors are not the controlling majority. *See Hearings on Funeral Industry, supra* note 308, at 258–260 (testimony of Royal Keith, Past Pres., NFDA).

Members of state licensing boards are, in many instances, chosen because they are respected industry leaders in their communities and states. As a result, they also tend to be active in trade associations. Funeral directors who have served as officers of state and national funeral trade associations have also served as state licensing board members. *See* 1978 Staff Report, *supra* note 9, at 132–138. While peer review is not inherently a conflict of interest or necessarily bad policy, it does suggest that the state boards are likely to share many of the basic values and opinions of the industry itself. While state boards are thus likely to be active in enforcing regulations against conduct or practices which the industry also condemns (*e.g.*, refusal to release a body, obtaining possession of body without permission, or misrepresentation), it is unlikely to be active in identifying as consumer problems those practices which the industry as a whole condones.

[311] Section 453.9 and the exemption process it establishes are discussed in more detail in Section II(I)(2), *supra*.

[312] The provisions are set out at 40 *Fed. Reg.* 39901 (1975) (Notice of Proposed Rulemaking, Section 453.2(b)) and were supported by the staff, after minor revisions, in the rule version appearing in the 1978 Staff Report, *supra* note 9, at 176–86 and 208–14.

[313] *See* discussion in Part II(A), *supra*.

[314] 1978 Staff Report, *supra* note 9, at 176–77, 208–09.

[315] *See* Report of Presiding Officer, *supra* note 8, at 54–59.

view of the small number of abuses and the availability of other adequate remedies, including such provisions in the rule is not warranted.

2. *Merchandise and Service Selection Techniques.* The Commission has considered and rejected a number of related recommendations of the rulemaking staff [316] which were intended to reduce funeral industry abuses by regulating the manner in which funeral providers presented caskets, as well as other merchandise and services. These provisions would have required that funeral providers:

(i) Display their three least expensive caskets in the same general manner as their other caskets are displayed; [317]

(ii) Disclose that their three least expensive caskets are available in different colors and arrange to obtain caskets in those colors upon customer request, if the caskets can be obtained within 12 hours; [318]

(iii) Not discourage a customer's selection of less expensive merchandise by disparaging its quality, misrepresenting its availability, offering defective or soiled merchandise for sale, or suggesting that a customer's concern for price reflects lack of respect for the deceased. [319]

(iv) Refrain from using any sales plan or compensation method which discourages salespersons from selling any goods or services which are offered for sale. [320]

The purpose of these provisions was to prohibit sales techniques which attempt to exploit a customer's grief or desire to show affection for the deceased in order to manipulate the customer into the purchase of more expensive merchandise. The Commission has concluded, however, that the provisions would not necessarily provide consumers with significant benefits above and beyond those provided by the information disclosure provisions in the rule. Those provisions require full information about a funeral provider's offerings and prices to be disclosed on a general price list, casket price list, and outer burial container price list. Such disclosures would let consumers know what merchandise and services the funeral providers sell, including the three least expensive caskets. The Commission was concerned that the provisions seeking to regulate oral representations would be difficult to enforce. [321] In addition, the Commission felt that the provisions singling out a funeral provider's three least expensive caskets for special treatment could result in significant compliance costs without ensuring that the goals of the provision were met. In particular, the provisions could have the adverse effect of funeral providers choosing not to sell certain low-price caskets which they currently made available to customers. The Commission has concluded, therefore, that reliance on rule provisions designed to stimulate information disclosure is the most effective way to ensure that consumers have a *bona fide* opportunity to purchase low-cost caskets and other merchandise if they so desire.

3. *Market Restraints.* As originally proposed, [322] the market restraints provision would have made it a rule violation for funeral providers to prohibit, hinder, or restrict other persons from (i) offering inexpensive funerals; (ii) entering into contracts with groups (called "memorial societies") which assist their members in making funeral arrangements; or (iii) price advertising. The provision also would have required funeral providers to place a notice in any advertising or promotional materials advising readers that funeral home prices vary considerably and that price information is available over the phone. The intent of the provision was to eliminate practices designed to stifle vigorous price competition.

The Commission has determined not to include a market restraints provision in the funeral rule. Any such provision would have to fall within the limitations specified by Section 19(c)(1)(B)(ii) of the FTC Improvements Act of 1980. [323] Section 19 permits the Commission only to prohibit or prevent the use of "threats or boycotts" by funeral providers against other funeral providers. In 1981, the Commission published a revised version of the provision which was so limited. [324] To comply with Section 19, the 1981 version of the rule did not contain prohibitions on the use of disparagement or blacklists, or the misuse of state administrative or judicial processes. Moreover, Section 19 limited such a provision to acts and practices directed against funeral providers. The scope of Section 19 did not extend to other persons who could be affected by funeral providers' market restraining practices, [325] such as casket wholesalers or body pick-up services.

After receiving comment on the midified version of the market restraints provision proposed in 1981, the Commission has decided that its inclusion in the rule is not warranted.

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[316] The provisions were set out at 40 FR 39902 (1975) (Notice of Proposed Rulemaking, § 453.4), and except for one noted below, were also proposed, with some revisions, in the 1978 Staff Report, *supra* note 9, at 301–339.

[317] The provision was directed at the practice of funeral homes not displaying their least expensive casket(s) in the same selection room as most other caskets to discourage purchase of such merchandise by all but the most persistent consumers. A number of surveys, and other evidence, showed that inexpensive caskets are often not shown in the main selection room. *See, e.g.*, Comments of Maine PIRG, II–C–1400, at 2 (one-third of 116 funeral homes failed to display least expensive casket); FTC Survey of Funeral Prices in the District of Columbia (1974) VI–D–3 (14 out of 36 funeral homes failed to display least expensive casket); H. Buckingham, Maryland consumer, II–B–1159; H. Staples, Florida consumer, II–B–1444. The evidence also indicated that this practice will be successful in preventing most consumers from purchasing the least expensive casket. A NYPIRG survey of 127 consumers found that only 28 realized that there might be caskets available besides those they saw, and only 7 of those respondents asked if anything less expensive was available. NYPIRG Ex. 1 (N.Y.), at 8.

[318] There was some evidence of funeral providers intentionally displaying inexpensive caskets in a damaged condition to discourage their purchase. Instances were cited of inexpensive caskets with nails showing, straw sticking out, and with linings that were worn or ripped. *See* J. Page, California funeral home employee, Tx 7375–77. *See also* R. Mee, former Wisconsin casket salesman, III–F–16, at 5. *But see* Rebuttal of NSM, X–8 (Q–R); Rebuttal of NFDA, X–9 (20).

[319] A number of reports on the record indicate that purchase of inexpensive caskets has been discouraged by referring to them as "welfare" caskets, or "pauper's boxes." *See, e.g.*, J. Greyson, Indiana consumer, II–B–1436; W. Troemel, New Jersey consumer, II–B–438; J. Sagan, Massachusetts consumer, II–B–2239 at 3; C. Moles, Iowa consumer, II–B–318. Similarly, funeral directors appear to have attempted to discourage cremation by referring to that form of disposition as "disposals." *See* L. Smith, California student, VI–D–54, at 7; E. Morgan, author, Tx 9883. The various ways in which concern for price might be discouraged by funeral providers are described generally in the 1978 Staff Report, *supra* note 9, at 320–25.

[320] The evidence indicated that a few of funeral homes in different parts of the country used compensation systems which linked pay to the size of funeral sales. *See* J. Page, California funeral home employee, Tx 7346; K. Marsh, California funeral director and attorney, Tx 6757; H. Senison, New York funeral director, II–A–145. However, staff deleted the provision from their 1978 recommended rule based upon their view that the limited incidence of the practice and the lack of evidence that it produced significant consumer injury did not warrant the provision's inclusion in the rule. *See* 1978 Staff Report, *supra* note 9, at 337. The Commission also finds that the provision is not appropriate for inclusion in the rule.

[321] The provisions banning the disparagement of merchandise or a concern for costs were not based on deception, but unfairness. As a result, it was not possible to prevent the abuse through affirmative disclosures, as was the case with other oral misrepresentations addressed by the rule. *See* Section II(B), *supra*. Enforcement would have depended solely upon consumer complaints, which would have made enforcement difficult. Further, the scope of the provisions was so vague as to raise serious questions whether funeral providers would have an adequate understanding of the conduct proscribed by the rule.

[322] *See* 40 *Fed. Reg.* 39904 (1975) (Notice of Proposed Rulemaking, Section 453.6).

[323] Public Law 92–252, 97 Stat. 391, 15 U.S.C. 57a note.

[324] *See* 46 FR. 6979 (1981) (Notice of Publication of Revised Proposed Rule and Notice of Opportunity to Comment, Section 453.4).

[325] *See* Section 19(c)(1)(B)(ii), 15 U.S.C. 57a note.

One reason is that the conduct proscribed in the provision was, as limited, already against the law. Since the Commission has the authority to bring individual actions against such violations of the antitrust law, adding such provisions to the rule would be superfluous. In addition, much of the evidence to support earlier version related to abuses which could no longer be covered by the rule under Section 19. It related to activities which are not "threats" or "boycotts" or to activities directed against persons or entities other than funeral providers.[326] The Commission finds that the acts and practices described in the record which fall within the limitations of Section 19 do not warrant a rule provision.

While the Commission has chosen not to include a "market restraints" provision in the final rule, it wishes to make clear its resolve to proceed on a case-by-case basis against any such future activities. The record contains allegations that boycotts and other concerted activity may have been directed at entities attempting to enter the funeral market and offer non-traditional services, such as direct disposition.[327] The Commission encourages industry members, consumers, and others to bring such incidents to its attention.

4. *Nonitemized general price list.* In 1981 the Commission received a proposal from two funeral director trade associations for an alternative version of the rule which would be acceptable to their memberships.[328] The proposal was not accepted, however, by NFDA, the largest funeral trade association. The proposal was supported by some of the Commission's staff.[329] A central feature of the proposal was its price disclosure provision, which gave funeral providers the option not to quote separate prices for the individual goods and services they sell.

Under this proposal, funeral providers would have had the option of listing their funeral arrangements by packages, with each package stating a price and including a description of every funeral good or service it contained. Funeral providers who chose this option also would have had to prepare a credit list, which would have separately indentified the funeral goods and services in the packages and would have shown a dollar amount which would be subtracted from the package price if a consumer declined a particular funeral good or funeral service included in that price. This "package with credits list" proposal would have affirmatively informed consumers of their right to decline.

In opposing this alternative disclosure format, many consumers and consumer groups argued that sanctioning package pricing would encourage consumers to continue purchasing packages;[330] indeed, some contended that the alternative would have the effect of establishing the so-called "traditional" funeral as the standard or norm.[331]

After careful consideration, the Commission rejected the proposal and adopted itemization instead. While the Commission is aware that the proposal would have ensured significantly greater opportunity for choice than present industry practices permit, the Commission was concerned that placing the burden on consumers to affirmatively reject goods and services "bundled" by funeral providers was inappropriate given the consumer's unique vulnerability and dependence on the funeral director for guidance. The "package with credits list" format suggests that the consumer who wants less than a full funeral must choose something other than "normal," whereas the itemization format legitimizes the concept that each part of the funeral is something that is affirmatively chosen by a consumer. Further, in view of the traditional reluctance to "bargain" or "negotiate" prices when arranging a funeral, stemming in part from natural reservations about the propriety of price concerns when arranging a funeral for a loved one, putting the consumer in the position of deciding how to *save* money, rather than deciding how to *spend* money, is likely to have very different results. In short, the Commission decided that it was necessary, in light of the consumer's unique position and past industry sales practices, to remove any vestiges of "packaging" which would suggest to consumers what was appropriate.

In addition, allowing alternative formats would inhibit the consumer's ability to compare prices, one of the goals of the rule. Under the itemization proposal adopted by the Commission, every funeral director is required to have a relatively standardized price list, which can be used to give prices over the telephone or which consumers can obtain from different homes.[332] Under the package with declination proposal, some funeral directors would have itemized lists, while others would have package-with-credits lists, making comparison shopping more difficult.

Finally, itemization is more consistent with the trend in state laws and with trends in the industry itself.[333]

The primary benefit of the alternative price list would be a possible reduction in compliance costs to funeral providers. This reduction might be possible because it would take less time for those funeral providers who currently quote package prices to prepare the alternative price list than to prepare a list with separate prices. However, it is the Commission's judgment that the burden of preparing itemized price lists is itself quite low[334] and that the incremental savings in compliance costs from allowing use of an alternative price list would be minimal.[335]

The trade associations supporting the proposal also believed that the "package with credits" proposal would enable funeral providers to continue using a "graduated recovery"[336] approach, thereby avoiding the itemization's alleged effect of raising prices for low-cost package funerals. As discussed in more detail in Section V(B), *infra*, itemization does not preclude "graduated recovery" and it will not necessarily result in higher prices for low-cost package funerals.

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[326] *See* 1978 Staff Report, *supra* note 9, at 409–425.

[327] *See* 1978 Staff Report, *supra* note 9, at 420–26.

[328] Letter and attached Comment, David C. Murchison and Daniel P. Oppenheim, attorneys for National Selected Morticians and Larry C. Williams, Sr., attorney for National Funeral Directors and Morticians Association, XVI–59 (March 23, 1981).

[329] Staff recommendations on the funeral rule, XVIII–1 (June 26, 1981); Letter of Albert H. Kramer, Director, Bureau of Consumer Protection (March 19, 1981), XVI–59, Ex. A. *But see* Memorandum from L. Dorian, Deputy Director, Bureau of Consumer Protection (June 29, 1981), XVIII–2 (recommending that the Commission not adopt the proposal).

[330] *See, e.g.*, Rebuttal Comment of NRTA/AARP, at XVII–23 (May 13, 1981); Rebuttal Comment of NCSC/ADA/CAFMS, XVII–16, at 30, 32 (May 13, 1981).

[331] *See, e.g.*, Rebuttal Comment of NRTA/AARP, *supra* note 330, at 16.

[332] Of course, funeral directors may offer packages *in addition to* itemized price lists, as discussed, *infra*.

[333] Possibly as a result of the increasing number of state and localities who are requiring itemization, *see* note 95, *supra*, the percentage of funeral directors using itemization has increased over the last fifteen years. For example, in 1971, 74% of funeral directors used unit or bi-unit pricing. *See* 1971 Professional Census, *supra* note 114. In 1975 the number of funeral directors using unit or bi-unit pricing had dropped to 65%. *See* 1976 Statistical Abstract, *supra* note 31.

[334] *See* discussion of costs and benefits for price disclosure provisions of rule in Section IV, *infra*.

[335] The proponents of the alternative price list also suggested that it would benefit consumers through lower costs for funeral arrangements. However, this "benefit" is based upon the view that itemized prices are higher than package prices. The Commission rejects such a view for the reasons stated in Section V, *infra*.

[336] For a more detailed discussion of "graduated recovery" see Section V(B)(6), *infra*.

IV. Analysis of Projected Benefits, Costs, and Effects of Funeral Rule

This section provides a summary analysis of the costs and benefits of the individual provisions of the funeral rule. Each provision of the rule is designed to address particular abuses reflected in the rulemaking record. As a result, the provisions of the rule are largely segregable from each other for purposes of analyzing its projected benefits, costs, and effects.

The costs and benefits of certain provisions are interrelated, however. The interrelated provisions are:

1. Section 453.2 which requires the disclosure of prices on an itemized basis and § 453.4(b) which ensures that consumers can purchase on an itemized basis;

2. Section 453.3(a) which prohibits misrepresentations concerning when embalming is required and § 453.5 which requires funeral providers to obtain prior approval for embalming;

3. Section 453.3(b) which prohibits misrepresentations concerning the legal requirements for purchasing a casket for cremation and § 453.4(a) which prohibits funeral providers from imposing that requirement themselves;

4. Sections 453.3 (c) through (f) which address other misrepresentations; and

5. Section 453.6 which imposes a recordkeeping requirement.

The costs and benefits of these five groups of provisions will be discussed together.

A. *Section 453.2 (price disclosures) and § 453.4(b) (optional purchases).* These portions of the rule address funeral industry practices which prevent consumers from selecting a funeral home on the basis of the prices it charges and from selecting different options for funeral arrangements once at the home. Most consumers do not get price information over the telephone, and in some instances, consumers cannot get price information over the telephone even when they ask.[337] Yet choosing a funeral home is a serious financial decision, since consumers will not change funeral homes once the funeral director has taken possession of the body. If price information is to be obtained prior to selecting a home, it must be obtained quickly since the body must be moved soon after death.

The record also indicates that after consumers have chosen a particular funeral provider, the practice of "package pricing" makes it difficult or impossible for consumers to select the type of funeral option which most suits their needs. The package price does not disclose the individual prices of the arrangement's components, or even that the arrangement consists of discrete components.[338] Many funeral providers refuse to sell other than a complete funeral package and refuse to give consumers a discount even if the consumer desires not to purchase all items in the package.[339]

The fact that consumers fail to obtain detailed price information before selecting a funeral provider and often cannot get such information even at the funeral home tends to insulate individual funeral providers from price competition. The lack of competition suggests that the overall level of prices in the funeral industry are higher than they otherwise would be in a properly functioning competitive market. Moreover, the refusal to sell on an item-by-item basis in the funeral home limits consumers' options and forces them to pay for items which they might refuse to purchase if given the opportunity to do so.[340]

1. *Benefits.* The rule benefits consumers by reducing the economic injury resulting from the aforementioned practices. It does so through a twofold approach. First, it alerts consumers that price information is relevant and available at the critical moment of choosing a funeral provider, and ensures that consumers can obtain sufficient price information to comparison shop among different funeral providers. The telephone price disclosure provision (Section 453.2(b)(1)) requires that funeral providers make price information available over the telephone. The provisions requiring itemized information on a general price list (Section 453.2(b)(2)), casket price list (Section 453.2(b)(2)), and outer burial container price list (Section 453.2(b)(3)), provide a relatively uniform format for the information which will be given to consumers over the telephone, further facilitating comparison shopping. Comparison shopping will help stimulate price competition among funeral providers, thereby better enabling consumers to get the maximum benefit for their money.

Second, the rule gives consumers in the funeral home an opportunity to consider various options and purchase only those items they desire. The itemized price lists disclose the costs of different goods and services, making such comparisons possible. Itemized information also would be made available on the itemized statement required by § 453.2(b)(5). This information would allow consumers to see the total cost of the items they tentatively have decided to purchase for a given funeral and to evaluate them in conjunction with each other. Section 453.4(b), the "optional purchase" provision, ensures that consumers can make use of such price information by making a decision to decline items which they do not wish to purchase.

The Commission anticipates that these provisions will reduce economic injury through both a short term and a long term effect. In the short term, the greater ease with which consumers will be able to obtain price information for purposes of comparison shopping should substantially increase the number of consumers who do so.[341] This in turn, will create a pressure on funeral providers to price their products at competitive levels in order to continue receiving business from consumers who comparison shop. Even consumers who do not comparison shop will benefit from this overall tendency toward lower prices. In addition, all consumers will have the opportunity in the funeral home to purchase only the items they want and to pay accordingly. This will provide them with another opportunity to exercise their choice and save money.[342] Such an opportunity will be the only one directly available to consumers who are unable to comparison shop among funeral homes.

In the long term, increased competition may further benefit consumers by changing the structure of the funeral industry. As prices decrease, the principal way by which existing funeral providers will be able to keep up their profit margins will be by lowering their costs per funeral. This should give at least some firms an incentive in the long term to become more efficient, possibly by adapting their physical plant and marketing strategies or providing more specialized services at greater volume.

[337] *See* discussion in Part II(A), *supra*.

[338] *Id.* at note 75 and accompanying text.

[339] *Id.* at note 76 and accompanying text.

[340] *Id.* at notes 92–102 and accompanying text.

[341] Surveys of consumer attitudes and other evidence on the rulemaking record suggest that a substantial number of consumers would use such information. *See* 1978 Staff Report, *supra* note 9, at 510–11. For example, a 1974 survey sponsored by The Casket Manufacturers Association reported that 95% of the respondents felt that such information was "somewhat" or "very helpful."

[342] A trade association survey revealed that from 10% to 40% of consumers responding would not use such services as embalming (9.5%), other care of the body (9.7%), visiting hours (20.9%), funeral services in the funeral home (11.4%), family car (29.1%), and other automobiles (40.6%). Moreover, in every one of these categories, another one-quarter to one-third of the respondents were undecided. The survey received these responses based on questions which quoted specific dollar amounts for the services in question. Blackwell Survey, *supra* note 59, at Question 6.

In addition, greater availability of price information may encourage entry into the funeral market of new competitors seeking to attract business by offering lower prices. Such potential competitors appear to be inhibited from entry into the market in most areas of the country by existing practices which make price comparisons difficult and which, thereby, decrease the likelihood that consumers will comparison shop.[343] This decreases the pool of potential customers for any new venture and increases the likelihood that the venture will fail.

2. *Costs.* The Commission believes that the price disclosure provisions will result in two types of compliance costs to funeral providers. First, most funeral providers will be faced with the initial cost of revising their method of quoting prices so as to come into compliance with the rule. Second, they will incur some ongoing costs as they remain in compliance with the rule.

The most substantial initial compliance cost which faces funeral providers will be that falling on those funeral providers who do not currently quote their prices in an itemized manner, approximately 65%.[344] These individuals will be required to produce price information in a format different from that which they currently use.

The Commission estimates that the compliance costs for these funeral providers to revise their pricing formats will be relatively low. One reason is that the preparation of itemized price information will not require that most funeral providers search out new cost data. Rather, the basic data which they will need to use is already available to them and, in fact, is currently used by them, albeit in a different format. Most funeral directors who presently use package pricing also offer credits for unwanted items, and such credits can be a basis for the itemized prices. For others, a number of business texts provide basic "do it yourself" methods for determining prices under an itemization system.[345] It can also be expected that state and national associations will assist in giving advice, and that the experience of funeral providers who have been required to switch to itemization under state law will be useful.

In addition to this cost, which only some funeral providers will incur, all providers will be required to prepare the printed papers, notebooks, charts, or other forms which are the tangible medium on which price lists and statements will be shown to consumers. The time involved in designing the lists also will be minimized, however, through availability from the Commission and other sources of model forms.[346] Funeral providers will be able to convert the model forms into actual price lists and statements simply by inserting in appropriate places the necessary information (such as name, address, and prices) for their particular business.

Besides these initial costs, there will be three relatively minor ongoing costs of complying with the price disclosure provisions. One will be the increased time spent explaining prices over the telephone as more consumers use the telephone to comparison shop. The absolute amount of additional time spent answering price questions over the phone would be minimal, however, given that the prices which are listed on the general price list are basic and relatively few in number and given that, for the most part, the funeral provider need only read these few prices (or a subset of them, if only that is requested) over the phone.

The second ongoing cost would be the cost of reproducing the price lists and statements so that copies of the forms could be made available to consumers. This cost would be nominal for the casket and outer burial container price lists, which do not have to be given to consumers for retention. It also would be negligible for the statement, since it can be merged with forms which funeral providers already use. The marginal cost therefore would be small. The only potentially significant cost would be that of reproducing the general price list, which must be provided to consumers for retention. Given that the average funeral provider conducts 94 funerals a year, however,[347] even in this case the actual number of forms given out would be small and the cost of complying with the provision would be only a few dollars a year.[348]

The third ongoing compliance cost would be the time involved in updating the price lists as the funeral provider's prices or offerings change. However, the incremental burden imposed by the rule in this connection would be small, since funeral providers are already obliged to recalculate their prices whenever their costs or offerings change, irrespective of the pricing method they currently use. If any additional effort were imposed by the rule, it would be time involved in transposing these prices to the price lists required by the rule.

B. *Section 453.3(a) (embalming misrepresentations) and Section 453.5 (prior permission for embalming).* Section 453.3(a) prohibits funeral providers from representing that embalming is required by law when it is not or failing to disclose to consumers that embalming is not required by law except in certain special cases. To prevent such practices, the provision requires that consumers be given a written disclosure advising them of their right, except in special cases, to select arrangements which do not require embalming. The purpose of § 453.3(a) is in short, to ensure that consumers know that embalming is an option.

Section 453.5 works together with § 453.3 by requiring funeral providers in most instances to obtain permission before embalming. Section 453.5 also requires that funeral providers give consumers a disclosure advising them that they have the right not to pay for embalming performed without their prior permission if they select arrangements which do not require embalming. Thus, § 453.5 ensures that most consumers will have the opportunity to exercise a choice in deciding whether or not embalming should be performed.

1. *Benefits.* A significant benefit of these provisions will be to end practices which deceive consumers into purchasing embalming through misrepresentations of those instances where providers embalm without permission. Where embalming would be prevented through the operation of the rule, a savings of the cost of embalming, which amounts to between $50 and $150 per arrangement, will result.[349] The rulemaking record suggests that a substantial percentage of consumers would decline embalming if offered a true choice, possibly as many as thirty percent.[350] While it is impossible to

[343] *See* discussion in Part II(A), *supra*, at notes 98–103.

[344] *Id.* at note 83.

[345] *See, e.g.*, Blackwell, Talarzyk and Beever, A Manual for the Return-on-Investment Approach to Professional Funeral Pricing (1976); Pine and Pine, Adaptive Funeral Pricing and Quotation (1975).

[346] In addition, the model price lists and statement which the Commission is publishing simultaneously with the rule provide simple, basic guidance on the type of prices which funeral providers must use.

Shortly after the funeral rule was proposed, the National Funeral Directors Association distributed model price disclosure forms. Similarly, state trade associations have helped their members by providing sample forms in states which have enacted itemization requirements. *See* 1978 Staff Report, *supra* note 9, at 488, n. 40. The Commission anticipates similar trade association activities in helping funeral providers comply with the rule.

[347] *See* 1978 Staff Report, *supra* note 9, at 85.

[348] The rulemaking record indicates, of course, that one effect of the rule will be to encourage consumers to contact two or more funeral providers before deciding with whom to make arrangements. Most such contacts will be by phone, however, and would not involve handing out price lists.

[349] *See* discussion in Part II(D), *supra*, at note 249.

[350] *Id.* at notes 247–248.

predict with certainty the number of consumers who will decline embalming given a choice, even a relatively small percentage of declination can amount to large savings. The total benefit to consumers from these provisions alone, therefore, could be expected to equal millions of dollars a year in savings.[351]

2. *Costs.* The provisions will result in minimal initial and ongoing compliance costs for funeral providers. The only initial costs will be those involved in preparing the disclosures required by §§ 453.3(a) and 453.5. There disclosures can be copied verbatim from the model general price list and model statement of funeral goods and services selected which the Commission is publishing along with the rule.

In addition to these initial costs there will be minimal ongoing compliance costs. The only such costs of significance are attributable to § 453.5, and are the costs of the time involved in obtaining prior permission for embalming. These costs should be negligible, however, since approval may be obtained either orally or in writing, and in whatever manner is most expeditious under the circumstances. Typically, permission could be requested of the family during the "first call", when the funeral provider is asked to pick up the body, or during the funeral arrangements conference if that conference is held within a few hours of death. Moreover, § 453.5 has a built-in limitation to ensure that costs of seeking prior permission do not become excessive in extraordinary cases. The Section specifically permits embalming without prior permission if the funeral provider is unable to contact a family member or other authorized person after exercising due diligence (and has no reason to think that the family does not want embalming performed). Thus, the cumulative burden of obtaining prior permission for embalming should be minimal.

C. *Section 453.3(b) (casket for cremation misrepresentations) and § 453.4(a) (alternative container requirements).* The rulemaking record indicates that consumers seeking to arrange direct cremations want to buy inexpensive cremation containers in lieu of an ornamented, and correspondingly more expensive, casket.[352] Sections 453.3(b) and 453.4(a) of the rule are intended to eliminate two related practices. Section 453.3(b) prohibits funeral providers from representing that the law requires a casket for cremation. Section 453.4(a) correspondingly prohibits funeral providers from imposing that requirement themselves. The provision further requires that funeral providers who arrange direct cremations make simply constructed body receptacles (unfinished wood boxes and alternative containers) available to consumers desiring to use such items for direct cremations. Finally, § 453.3(b) requires that funeral providers give consumers a written disclosure to inform them of their right to purchase merchandise other than ornamented caskets for direct cremations.

1. *Benefits.* These provisions will enable persons desiring low-cost, simple dispositions to obtain unfinished wood boxes or alternative containers. The benefit to consumers will be a savings in their total funeral costs. As is the case with embalming, discussed above, these economic savings can be substantial. For example, cardboard, composition, and wooden alternative containers typically cost no more than $20 to $65 at retail, while ornamented metal or solid wood caskets sell for at least $150 to $250.[353] The total savings, of course, would depend on the rate at which consumers will choose to buy such containers in lieu of caskets. While a precise prediction of the rate is impossible, even a modest rate could result in significant aggregate savings.[354]

2. *Costs.* The only potentially significant compliance costs imposed by either § 453.3(b) or § 453.4(a) will be imposed by § 453.4(a). Section 453.3(b) will result in some very minor initial compliance costs, because it requires funeral providers to place a written disclosure on the general price list. However, this can be done quickly and simply by copying the disclosure appearing on the model general price list which accompanies the rule.

On the other hand, the requirement in § 453.4(a) that unfinished wood boxes or alternative containers be "made available" to customers arranging direct cremations could impose somewhat more significant costs on some funeral providers. Even so, these would be negligible for the great majority of funeral providers because the Commission deliberately has drafted § 453.4(a) only to require that unfinished wood boxes or alternative containers be "made available" to customers. Most funeral providers, therefore, would not have to stock such items, since the items could be made available to customers from the stock of the casket wholesaler with whom the funeral provider normally does business. Consequently, most funeral providers would not have inventory or storage costs; the item would be bought only after being ordered by a consumer. The Commission thus anticipates that most funeral providers will be able to comply with § 453.4(a) without any special expenditure of time or money.

A relatively small number of funeral providers, such as those in isolated rural areas, would have to stock unfinished wood boxes or alternative containers so that they would be available to customers arranging direct cremations. For such funeral providers, the compliance burden would be inventory and storage costs. None of these costs should be substantial, however. Funeral providers would only be required to stock a sufficient number of containers to meet expected demand. An average funeral home might arrange 3 or 4 direct dispositions per year.[355] Of course, funeral directors can rely on their experience in predicting the demand for such items in their own community. Inventory costs, then, will be low: for most homes having to stock them, having one or two such unfinished wood boxes or alternative containers would be sufficient. The record shows that such containers have a wholesale cost of as little as $5.[356] Storage costs are also minimal, since many types are collapsible, thereby minimizing storage problems.[357] It is the Commission's

[351] Approximately 1.9 million funerals are arranged per year. An NFDA-sponsored survey indicated that 9.5% of consumers would decline embalming in an "average" funeral home, while 24.7% more were undecided. Taking a hypothetical declination rate of 10% and an embalming cost of $75, the total savings to them would be over $14 million. Blackwell Survey, *supra* note 59, at Question 6.

[352] *See* Section II(B)(2)(a), *supra.*

[353] 1978 Staff Report, *supra* note 9, at 239, nn. 110, 112. The rule does not, of course, require that funeral providers charge $20–$65, or any other prices for unfinished wood boxes or alternative containers. However, the rule does require that the items be constructed of a limited range of typically inexpensive materials. This will make it difficult for funeral providers to sell such merchandise at an abnormal mark-up.

[354] In 1977, the direct disposition rate was approximately 4.5%. Where cremation is the form of direct disposition, caskets would be unnecessary and consumer could save from $70 to $200 (the difference between the price of alternative containers and the least expensive casket.) If 70% of direct dispositions are cremations, and if only 10% of those consumers choose to save the minimum amount ($70), total aggregate savings would be $418,950. On a high range, if 90% of the consumers buying direct cremation save the maximum amount ($200), total consumer savings would be $10,733,000. In one chain of funeral homes which disclosed that caskets are optional, nearly 15% of the *total* dispositions (including burials and full funerals) involved the purchase of a minimal container. Purdy, Oregon funeral director, Sea. Ex. 3.

[355] Based on an average 94 funerals per year and a 4.5% direct disposition rate. *House Small Business Comm. Hearings, supra* note 30.

[356] Progressive Mortuary Methods, 1976, II–A–860, at 8.

[357] *See* Staff Report, *supra* note 9, at 245.

conclusion that the direct compliance costs will be relatively minor.

One indirect effect of this Section of the rule may also impose costs on consumers. Some funeral directors may find it more profitable to stop offering cremation altogether, rather than offer cremation with alternative containers. While this possibility exists, the Commission believes that several factors make such an outcome unlikely. A funeral director who does not offer cremation at all is likely to lose some customers to other funeral homes who do offer it or, in some areas of the country, to immediate disposition firms. While a direct cremation may not be as profitable as a full funeral, it is more profitable than losing a customer altogether. Since many funeral homes operate barely over break-even points,[358] many funeral directors may be reluctant to take the risk of losing even several customers who will make at least some contribution to fixed costs while paying variable costs.[359] Finally, the price lists required by the rule and the telephone price information requirement will make it easy for consumers to determine whether a funeral home offers cremation. To the extent the rule encourages such shopping, it is unlikely that the overall availability of cremation will decline even if individual firms decide to stop offering it.

D. *Sections 453.3(c)–(f) (misrepresentations other than embalming or casket for cremation).* These provisions address a variety of factual misrepresentations and failures to disclose material information. Specifically:

(i) Section 453.3(c) prohibits funeral providers from claiming that laws or cemetery regulations require the purchase of outer burial containers if they do not. The section also requires that funeral providers disclose this information to consumers by means of a statement on the outer burial container price list.

(ii) Section 453.3(d) is a general prohibition against misrepresentations of requirements imposed by federal, state, or local laws or by cemetery or crematory regulations. To decrease the frequency of such misrepresentations, the provision requires that funeral providers briefly describe in writing any requirements orally represented to a customer.[360]

(iii) Section 453.3(e) prohibits two types of false claims about product characteristics. First, it prohibits funeral providers from claiming that funeral goods or services can delay decomposition for a long-term or indefinite time. Second, it prohibits claims that funeral goods (primarily caskets and outer burial containers) will protect the body from gravesite substances (such as water) if they cannot.

(iv) Finally, § 453.3(f) prohibits funeral providers from claiming that they are billing their customers at cost for items purchased for the customer from other persons ("cash advance items"), *e.g.*, flowers or obituary notices, if this is not the case. Correspondingly, the Section requires that funeral providers disclose in writing that they charge for their services in obtaining cash advance items if they do.

Unlike the three sets of provisions described in the immediately preceding sections, these provisions do not address interrelated problems. However, these provisions operate in similar ways to address their discrete problems. For this reason, their benefits and costs can be described together.

1. *Benefits.* With the partial exception of the provision on cash advance items, all of the misrepresentation provisions produce benefits in identical ways: They reduce the economic injury which consumers suffer when misrepresentations or failures to disclose material information induce consumers to purchase unnecessary products. Such losses can be substantial. For example, burial vaults range in price from $190 to $1,500.[361] If a consumer is told falsely that such items are required by law or cemetery regulations, the economic injury can thus be considerable. Even if the cemetery does, in fact, require use of some sort of outer burial container, misrepresentations about such requirements can still cause substantial economic losses to consumers. Cemeteries do not require use of burial vaults *per se*. They permit, alternatively, the use of grave liners, which range in price from $55 to $180. *See* Part II(B)(3)(a), *supra*, at note 175. The difference between this price and the price of a burial vault represents economic injury to a consumer who would have purchased a grave liner if told of the option to do so. Similarly, a consumer who purchases a "sealer" casket (one which keeps out water and other gravesite substances) in the mistaken believe that such a casket will preserve the body may pay $300 to $500 above the price for comparable caskets which are not sealers.[362] However, the merchandise will not perform the function for which a premium price was paid. By preventing misrepresentations and providing accurate information to consumers through disclosures, § 453.3(c)–(e) help ensure that consumers only pay for items which are truly necessary or desired by the consumer for the arrangements selected or which have a genuine ability to perform in the manner described.

The provision on cash advance items also can save consumers money, although in a slightly different manner. Section 453.3(f) helps ensure that consumers are told if they are being charged an amount above and beyond the funeral provider's stated fee for professional services to obtain cash advance items. The consumers then may elect to obtain the items directly and save on the service fee. While these savings would vary depending on the amount of the funeral provider's surcharge, they could be substantial.[363]

2. *Costs.* With the exception of § 453.3(d) the costs of these provisions are virtually nonexistent. They impose only two types of obligations on funeral providers. First, most provisions require that funeral providers prepare standard preprinted (or written) disclosures for inclusion on one of the price lists or the statement which the rule requires. However, these disclosures simply can be copied from the Commission's model forms. Second, the provisions require that funeral providers cease to make certain misrepresentations. This does not require funeral providers to take any affirmative steps or to incur corresponding compliance costs.

Section 453.3(d) is somewhat different from the rest of the provisions because it also requires that funeral providers briefly describe in writing any legal or cemetery requirements which they represent orally to a customer. The amount of time to do so can be expected to vary from one arrangement to another. However, it will be largely

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[358] Blackwell, Appendix B of prepared stmt, D.C. Ex. 29.

[359] *Cf.* S. Shavell, Pro. Economics, Tx 11, 909, 11,924.

[360] Of course, funeral providers desiring to make misrepresentations without detection might consider simply not writing such misrepresentations down. However, the rule requires a preprinted disclosure on the statement of goods and services selected informing consumers that oral claims about legal or cemetery requirements also will be noted in writing. If this does not occur, that fact alone would serve to alert consumers that something was amiss.

[361] *See* Part II(B), *supra*, at note 179.

[362] *See* 1978 Staff Report, *supra* note 9, at 292.

[363] The National Funeral Directors Association's 1977 annual survey of funeral home economic data revealed a 5% difference between the reported income attributable to cash advance items and the corresponding expense figure. This statistic suggests an average national service charge equal to 5% of the cost of cash advance items. The total mark-up amounts to nearly $18,000,000. 1977 Statistical Abstract, *supra* note 191.

within the funeral provider's own control, since statements need not be described in writing unless the funeral provider elects to make them orally in the first place. At most, it might involve a brief description of an embalming regulation and a cemetery requirement. In many situations it would not even be necessary to describe the cemetery requirement, if the customer expressed a desire to purchase an outer burial container for other reasons. Thus, the overall time necessary to comply with § 453.3(d) should be small.

E. *Section 453.6 (recordkeeping requirement).* Section 453.6 of the rule requires that funeral providers keep a copy of each nonidentical casket price list, outer burial container price list, and general price list disseminated to customers as well as a copy of each statement disseminated to customers. The provision does not directly remedy specific abuses. Rather, it is a remedial requirement which will help end the unfair and deceptive practices identified in § 453.2 and § 453.3 of the rule. It will simplify rule enforcement by enabling Commission staff to examine written records rather than having to conduct more time-consuming oral interviews to detect rule violations.

1. *Benefits.* As noted above, the recordkeeping provision will benefit consumers by helping to ensure compliance with the substantive provisions of the rule. As part of its enforcement program, the Commission will check the records of individual funeral homes to ensure that the price lists and statements required by the rule are complete. Since most of the information which the rule requires be given to consumers will be contained on the price lists and statement of services selected, availability of those documents for inspection will make it possible to detect rule violations efficiently and thus to enforce the rule effectively. The recordkeeping provision will thereby have substantial deterrent value.

The principal alternative to a recordkeeping provision would be to use consumer complaints to detect rule violations. However, evidence on the rulemaking record shows that the frequency with which consumers complain about problems in this area does not appoach the frequency with which they occur.[364] In part, this absence of complaints is attributable to the fact that the experience of making funeral arrangements is unpleasant, so that consumers are anxious to put the experience behind them rather than to relieve it by registering a complaint. In part, the lack of complains also is attributable to the fact that consumers are not sufficiently informed to be aware that any improper practices have occurred.

To a considerable extent, therefore, the Commission will need to rely on its own resources to monitor compliance with the rule. The recordkeeping requirement significantly increases the effectiveness of such monitoring by requiring that a substantial majority of the information which the rule requires to be disclosed is readily available for examination by Commission officials.

2. *Costs.* The compliance burdens attributable to Section 453.6 are the tasks of: (1) Storing forms; and (2) removing forms from storage. The amount of time which would be required to perform these functions would depend on the number of funerals arranged yearly by a funeral provider. However, the Commission estimates that the amount of time required to comply with the provision will average under one hour per year for individual funeral providers.[365]

V. Other Economic Issues Raised in the Proceeding

In this section of the regulatory analysis, the Commission discusses two economic issues not specifically addressed in the analysis of the costs and benefits for particular rule provisions. One issue is the general effect of the rule on consumers and small businesses. The other issue is whether or not itemization will cause funeral prices to rise.

A. *Effects of the rule on small businesses and consumers.* There are approximately 22,000 funeral providers in the United States.[366] A 1973 report by the U.S. Department of Commerce indicates that most have a small payroll, with 80% employing seven or fewer persons.[367] Trade association statistics show that in 1972, the average number of deaths per funeral establishment was ninety-four,[368] or fewer than two a week, although actual case volume varies greatly.[369] These statistics and others are consistent with a conclusion that funeral establishments are primarily small businesses.

Thus, it is evident that the primary impact of the rule will be on small businesses. The Commission anticipates that the impact of the rule will be primarily manifest in three areas. First, compliance costs will slightly increase funeral providers' business expenses. The review of the rule's costs and benefits in Part IV indicates, however, that compliance costs will not be significant. Most would be one-time costs attributable to initial preparation of the price lists and "statements of funeral goods and services selected" required by the rule. The only potentially ongoing compliance costs would be those involved in updating the price lists, providing the general price list for retention to customers, and retaining records for a period of one year. There is no reason, however, to believe that these costs would be anything more than minor.

Indeed, evidence on the rulemaking record confirms the fact that compliance costs would be negligible.[370] For example, a survey on the subject of compliance costs,[371] authorized by the Commission, concluded that the cost of complying with the rule would not be significant. These results derived from direct queries to funeral providers about the difficulty they would have had complying with the 1975 version of the funeral rule. In-depth interviews were conducted at a variety of different funeral homes in the Atlanta area, including urban and rural, large and small firms. Compliance costs for the 1975 rule version, according to the survey, were not significant for the industry members surveyed. Even so, the Commission has subsequently revised the rule to futher reduce compliance costs.

Additional evidence that the rule would not be burdensome comes from the expressed views of two of the major funeral trade associations. These associations proposed an alternative rule virtually identical to the final rule promulgated by the Commission with

[364] *See, e.g.*, 1978 Staff Report, *supra* note 9, at 452–60.

[365] The calculations which resulted in this figure are described in a "Supporting Statement" which the Commission submitted to the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980. *See* Letter from the Commission, to the Honorable David A. Stockman, (March 8, 1982).

[366] 1978 U.S. Industrial Outlook 463.

[367] U.S. Department of Commerce, [1973] Country Business Patterns, VI–A–45, at 26.

[368] *See House Small Business Subcomm. Hearings, supra* note 30, at 65, 75–76 (testimony of H. Raether).

[369] *See, e.g.* Kissel, *supra* note 35, at 47–49 (25–500 funerals per year); and F. Bates, National Selected Morticians, Tx 12,580 (75–5,000 funerals per year).

[370] In reaching this conclusion, the Commission is mindful that some participants felt compliance costs would be significant. Thus, trade associations and individual funeral providers typically expressed concern about compliance costs. *See, e.g.*, National Funeral Directors Association, Post-Record Comment, XIV–848, at 609. On the other hand, consumer groups and individual consumers expressed views that compliance costs would not be substantial. *See, e.g.*, Post-Record Comment, Consumer Federation of America, XIV–869, at 3. The Commission has considered all such views in reaching its own determination.

[371] R. Perry, MacFarlane & Co., Tx 9,148.

the exception of a provision for use of an alternative price disclosure system.[372] In submitting their proposal, the trade associations noted that such a rule would not be unduly burdensome to funeral providers.[373]

The second effect of the rule upon small businesses will be increased price competition, which could have a positive impact on prices in several ways. First, competition induced by greater price information could serve actually to reduce prices as price sensitivity by funeral consumers is increased—or, at least, competitive pressures could place a downward pressure on future price increases. Second, greater price information may serve to shift some consumers away from higher priced sellers to lower priced providers, thereby reducing overall consumer expenditures (and consequently the mean price). Both of these predicted results have in fact occurred in other markets where the Commission has acted to infuse greater price information.[374] Given the relatively fixed demand for funeral services, increased competition will likely lead to an actual reduction in total funeral expenditures, or at least a substantial reduction in the rate of growth. Third, several individual rule provisions will eliminate practices which induce consumers to purchase certain goods and services through misrepresentations or failures to disclose material facts. All of this will mean a loss of revenues to funeral providers. Such revenues are, however, attributable to deceptive practices or to practices which foster noncompetitive market conditions. The loss of such revenues to funeral providers will enable the economy to allocate them to more productive users.

Indeed, these lost industry revenues represent the principal benefit which the rule will provide to consumers. As the discussion in Part IV indicates, the total revenues generated by unfair and deceptive industry practices are substantial. Thus, the Commission anticipates that the rule will produce significant benefits to consumers by allowing them to save on expenses. These savings will much more than offset any price increase which might be attributable to the costs of complying with the rule.

In the Commission's view, these are the only principal effects which the rule will produce for consumers and funeral providers. In concluding this, the Commission rejects the view expressed during the rulemaking proceeding that the rule will cause the funeral industry to become dominated by large firms or chains.[375] Those firms which meet a specific demand—such as serving a small community or a particular racial, ethnic, or religious group—are unlikely to lose business because of generally increased competition.[376] The Commission does recognize, however, that there may be some increase in concentration within the industry resulting from the increased competition. The evidence suggests that there is substantial unused capacity in the funeral market. Notwithstanding this excess capacity and low utilization rates, the absence of competition has permitted inefficient sellers to remain in the market. To the extent that the rule achieves its intended effect, inefficient providers will have to change their operations to become more efficient or risk going out of business. It would be expected, therefore, that some inefficient businesses, including inefficient small businesses, will suffer an adverse competitive impact.

B. *The Effects of "Itemization" Upon Funeral Prices.* One of the designated issues discussed during the rulemaking proceeding was whether mandatory itemization forces up prices.[377] After reviewing the evidence, the Commission concludes that mandatory itemization presents opportunities for raising prices but that it does not, by itself, require funeral directors to raise prices.

The Commission has discerned six different arguments presented in support of the view that itemization would raise prices. Each is discussed below.

1. *Consumers will choose more.* Some funeral providers and others commented or testified that itemization will raise prices because consumers will buy more. It was suggested that when consumers see items broken out on a list, they find the prices so reasonable that they end up choosing more than they would if the items had been packaged.[378]

The record contains no empirical evidence supporting or refuting this claim. However, even if itemization had the effect of allowing consumers to choose more than they would have under itemization, that result would not be a reason not to require itemization. It is evident that such a result would be the operation of consumer choice, not any result of increased costs or marketplace distortions introduced by the rule. The purpose of the rule is to enhance consumer choice. If some consumers choose to buy more, with a clear understanding of the price associated with that choice, that is not a concern to the Commission. Other consumers will have the right to choose less.

2. *Prices will be changed.* Other funeral directors testified that if they were required to examine their pricing structure as a result of having to compile a new price list, many would decide that the prices that they had been charging in the past were too low and that the prices ought to be raised.[379]

Again, such an argument is not of concern to the Commission. The argument is not that the rule will impose costs which must be passed on to consumers in the form of higher prices, but simply that funeral directors have decided to increase profits by raising prices. Funeral directors are, of course, perfectly free to do that at any time. The rule has nothing to do with such a decision other than the fact that it requires funeral directors to think about prices in compiling a new price list. While funeral directors may choose to raise their prices in order to increase their profits, it is certainly not a necessary result of the rule.

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[372] This alternative is discussed in Part III(B)(4), *supra*.

[373] Letter of D. Murchison to A. Kramer, XVI–159, at 60. The principal difference between the rule and the proposal of the trade associations is that their proposal permitted a package price with disclosed discounts for parts of the package not selected.

[374] Following promulgation of the Commission's trade regulation rule on the Advertising of Ophthalmic Goods and Services, 16 CFR Part 456, (permitting price advertising) available evidence indicates that the rate of inflation for eyeglasses and eye examinations has been substantially lower than other medical care services and other consumer goods and services, and in some categories, such as soft contact lenses, average prices have actually declined.

For example, in the year following promulgation of the Eyeglasses rule, prices for soft contact lenses actually decreased from a 1978 average of $256 to a 1981 average of $204. (Includes full package price for eye exam, lenses, fitting, care kit and follow-up care. Source: Health Products Research, Inc., Morristown, N.J.; Prices are those collected in an annual consumer survey.) From October, 1978 to October, 1979, the unadjusted percentage price increase for eyeglasses (6.5), was less than for all consumer goods (12.2), durable goods (9.6), or medical care (9.4). [U.S. Department of Labor, Bureau of Labor Statistics, CPI Detailed Report (Oct. 1979)].

[375] *See, e.g.*, R. Sargent, New Hampshire funeral director, II–A–437; J. Couch, Illinois funeral director, Tx 2,931–32; J. Kerr, Jr., Sec'y-Treas., Kentucky FDA, Tx 3,036; R. Coats, Pres., Michigan FDA, Tx 3,755.

[376] *See, e.g.*, S. Shavell, Prof. Economics, Tx 11,882–83.

[377] 41 FR 7789 (1976) (Final Notice of Rulemaking, Designated Issue 28).

[378] *See, e.g.*, NSM, "Progressive Mortuary Methods," D.C. Ex. 20; NSM, "Itemization May Increase Your Total Profit Margin," D.C. Ex. 20.

[379] *See, e.g.*, Anderson, Pres., Utah FDA, Tx 6149; "The Folly of Itemization," *Mortuary Management*, Jan. 1976, at 8, III–I–113; Oral Presentation of Tom Clark, general counsel of NFDA, Feb. 28, 1979 (154; 158–159); NFDA Post-Record Comments, XIV–848, at 490; Report of the Presiding Officer; *supra* note 8, at 101.

3. *Compliance Costs.* Some funeral providers [380] commented that the direct compliance costs imposed by the rule will be passed on in the form of higher prices to the consumer.

For the reasons discussed above, the Commission believes that the direct compliance costs will be minimal. While such costs will undoubtably be passed on to consumers, rather than absorbed by funeral homes,[381] such increases should be as modest as the compliance costs themselves.

4. *The "economies of packaging argument".* Other funeral providers appear to argue that an identical set of goods and services will inherently cost more on an itemized basis than on a packaged basis and that the higher cost will be passed on in the form of higher prices to consumers. In other words, the argument is that there are "economies of packaging" which result in a lower cost for packaged services and merchandise. The analogy is often made to the "blue plate special" versus the "a la carte" menu.[382]

There are economies of packaging for many goods and services in our economy. Some products can be offered more cheaply to consumers by being packaged because it costs less to produce them in a packaged form than in an unpackaged form.[383]

There is no evidence to suggest, however, that there are any significant economies of packaging in funerals. The cost to the funeral director of offering a set of goods and services is much the same whether the parts are offered separately or together. The only potential savings in packaging is the savings in time that it may take to discuss individual requests under itemization.[384]

Even if there were modest cost differences, however, the rule expressly permits funeral directors to offer packages as long as they also offer goods and services on an itemized basis. Therefore, if there are any savings in packages, they can be passed on to those consumers who are interested in package prices. Consumers who are not interested in packages may have to pay somewhat more in order to buy on an itemized basis, but that is their choice. Further, any increase in price for the total package may be more than offset by the consumer's ability to decline unwanted items.

5. *The effect of declination.* The remaining arguments do not claim that itemization will affect the funeral director's cost, but instead recognize that itemization may result in a shift of prices presently charged. The arguments assume that overall revenues and overall profits will remain unchanged.[385]

Some funeral providers and others argued that if a substantial number of consumers decline items that would ordinarily be included in the package, in order to retain the same revenue and profit level, other prices would have to be increased to make up for the lost revenue.[386]

The rule does not regulate how funeral directors determine prices. Consequently, funeral directors may shift prices and set prices for parts of the funeral which they believe are appropriate. Some funeral directors may well choose to charge more for items which consumers are less likely to decline in order to make up for revenue lost on items consumers are more likely to decline. Other pricing strategies are also possible. As a resut, in the short term, there is the possibility that some consumers will be paying more, while others are paying less, than they would under a package pricing scheme.

The argument that some prices will go up depends, however, on the assumption that funeral directors will simply be able to recover any lost revenue simply by raising prices. As price competition increases, such a strategy may not be possible. Instead competition will generate pressure on funeral directors to become more efficient and to cut costs as the primary means of retaining profitable levels, rather than by raising prices. Further, to the extent that itemization allows consumers to choose less than traditional funerals, the increased demand for less than full funerals may stimulate innovative new services and allow the market to respond. As a result, the long run effect of itemization is expected to drive all prices down to the competitive level.

6. *The effect of itemization on the lowest-priced package funeral.* The major argument advanced by funeral providers and trade associations, however, is that itemization will necessarily cause the price of the lowest-priced package funerals to increase. Again, the argument assumes that revenue and profitability will remain the same: therefore, the argument also assumes that the price of the *average* package funeral will stay the same, while the price of the highest-priced package funeral will actually decrease.[387]

Under the present system of package pricing, many funeral directors apparently determine prices using a "graduated recovery" approach.[388] Basically, this method means that packages are priced so that buyers of higher-priced funerals are contributing proportionately more to overhead and fixed costs than are buyers of lower-priced package funerals. Since the only variable between a higher-priced funeral and a lower-priced funeral is the casket selected,[389] another way of explaining this method is that buyers of the low-priced funerals are paying more than the buyer of the low-priced funeral for the identical services. "Graduated recovery" therefore allows the funeral provider to lower the price of the package funeral on the low-price end, since any loss is made up by raising prices on the high-priced end.[390] In essence, buyers of higher-priced package funerals are subsidizing buyers of lower-priced package funerals.[391]

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[380] *See, e.g.*, R. Dyer, New York Funeral Director, Tx 1570–71; J. Caran, Pres., New York FDA, Tx 132.

[381] Profit margins in the funeral industry are general small and demand is not sensitive to price. Blackwell, Comprehensive Outline, D.C. Ex. 29, at 14, 20. As a result, any increases in costs will undoubtedly be fully passed on to consumers.

[382] In fact, the "economies of packaging" argument is never made explicitly, but only by analogy to situations in which such economies exist, *e.g.*, the blue plate special. *See, e.g., House Small Business Subcomm. Hearings, supra* note 30, at 71 (testimony of H. Raether, Exec. Dir. NFDA).

[383] To take an obvious example, it is often cheaper to buy a radio on a car when it comes as standard equipment than to order it separately, since the manufacturer can cut costs by simply including a radio in every car. The manufacturer can buy the radios at a lower price because it is buying them in greater volume and can cut labor costs by installing radios on all cars rather than on some cars but not on others.

[384] The record shows that the great majority of the costs of funeral homes are fixed costs for overhead which will not vary whether funerals are offered on a package basis or an itemized basis. *See, e.g.*, Blackwell, D.C. Ex. 29, Appendix B, Exhibits 5–7.

[385] Blackwell, D.C. Ex. 29, Comprehensive Outline, Exhibits 6–8.

[386] NFDA Post-Record Comment, XIV–848; *id.*

[387] Dr. Alfred Rappaport "The Expected Impact of Fragmented Quotation on Funeral Service Prices," III–I–3; NSM Post-Record Comment, XIV–849, at 95–107.

[388] *Id.*

[389] 1978 Staff Report, *supra* note 9, at 393.

[390] Some funeral providers indicated that the desire to create subsidized low-priced funerals stemmed from the funeral director's belief that a full package funeral should be affordable even in the low income range, so that everyone can afford a full, dignified funeral. *See, e.g.*, NFDA Post-Record Comment, XIV–848. Other commentators note, however, that such a pricing strategy could increase profits. *See, e.g.*, Dr. Michael Lawson, D.C. Ex. 26, at 14; Shavell, D.C. Ex. 13, at 16.

[391] Some have suggested that this undisclosed subsidy is improper in that buyers are not paying the "the true cost" for the items bought. Others have suggested that it is not the funeral director's role to re-allocate income by subsidizing the funerals of lower-income consumers with the funerals of high-income consumers. And others have commented that even if such a goal is appropriate, there is no guarantee that graduated recovery achieves that result. Poorer consumers may often be the consumers who buy the more expensive funeral. (Evidence in the record supports the claim, for example, that blacks buy more expensive funerals

The rule requires the prices of each part of the package to be disclosed separately. Funeral providers argue that this means that they will be required to charge all buyers the same price for the same services.[392] Since this would prevent funeral directors from charging buyers of higher-priced package funerals more than buyers of the lower-priced funeral for the same item, it would end the present subsidy of the buyers of the lower-priced funeral. As a consequence, it is argued that the prices of the lowest-priced funerals would have to increase.

The Commission recognizes that funeral directors may chose to respond to the rule by raising the prices of the lowest-priced funeral. The Commission does not believe, however, that this result is required by the rule. The rule does not preclude the use of "graduated recovery." Under one alternative format, for example, funeral directors may quote a single price for professional services and caskets. That price can be structured to achieve a graduated recovery effect. Even under the alternative list, funeral directors can price caskets to achieve the same result.

Nevertheless, some funeral directors may choose to raise the prices of the lowest-priced package funeral. The impact of this change, however, may not be great for two reasons. First, such increases may be offset by savings which consumers can achieve by declining unwanted items. Second increased price competition will generate pressure to keep prices down. Finally, nothing in the rule will prevent funeral directors from meeting any perceived social responsibility to make services available at nominal charges for welfare cases or from charging special lower prices for infant deaths or other special cases.

The evidence submitted during the rulemaking proceeding is consistent with the Commission's finding that while itemization presents opportunities for funeral providers to raise prices, which some funeral directors have in fact done, it is not necessarily required by the rule itself. Many funeral directors testified that prices increased after itemization,[393] while others testified that their prices did *not* increase.[394]

VI. Other Matters

A. *Effective Dates.* Because of the legislative review provisions set forth in Section 21 of the FTC Improvements Act of 1980, the effective date of this rule is most appropriately tied to the conclusion of the legislative veto period.[395] Under the terms of the statute, that period runs for ninety calendar days of continuous legislative session.

Industry members have been on notice since July, 1981, of the terms of the rule. In addition, the rule and this statement will be available during the legislative review process, which is likely to take at least four months. We have determined that the rule should become effective three months after conclusion of Congressional review. We believe that three months is a sufficient amount of time both the industry and consumers to become familiar with the requirements of the rule given the opportunity to become familiar with the rule during the legislative review. The Commission will accept petitions for exemption, pursuant to § 453.9 of the rule, during this period.

B. *Mandatory Review.* Section 432.10 requires the Commission to initiate a rulemaking amendment proceeding, pursuant to Section 18(d)(2)(B) of the Federal Trade Commission Act, within four years after the effective date of this rule, to determine whether the rule should be amended or terminated. Under the terms of Section 18(d)(2)(B) and the Commission's rules of practice, an amendment proceeding will provide full opportunity for all interested parties to provide data and views on the question of whether the rules should be modified or terminated, and will include the rights available under a Magnuson-Moss proceeding to limited cross-examination.

In addition, the Commission is required to decide, within eighteen months after the rulemaking amendment proceeding has been initiated, whether the rule should be modified or terminated.

The Commission has established this early review procedure to ensure that there is a need to continue the rule after it has had an opportunity to work in the marketplace. If the rule operates as expected, there should be increased competition in the market which may obviate the need for continued federal intervention. Requiring an early amendment proceeding commits the Commission to conducting a public proceeding, open to full participation, to review the operation of the rule and its effect. At this time, the Commission expects to have data from its own internal impact evaluation to aid in the consideration of these issues. The Commission will consider whether the rule should be modified or terminated at that time.

While the rule is expected to increase price competition, the Commission cannot say on the basis of the present record when the rule's impact will begin to be felt. For a number of reasons, the effect of the rule may take longer than in other industries.[396] Nevertheless, the Commission is committed to reviewing, at an early date, whether the rule appears to be operating as expected or whether some modification is required. If the marketplace problems addressed by the rule appear to be largely solved by increased competition, the Commission will consider terminating the rule at that time.

Accordingly, Title 16 of the Code of Federal Regulations is amended by the addition of new Part 453.

PART 453—FUNERAL INDUSTRY PRACTICES

Sec.

453.1 Definitions.

453.2 Price disclosures.

453.3 Misrepresentations.

than educated white consumers, *see* CalCAG Study, *supra* not 247, at 30–31).

The Commission does not suggest that such subsidization is improper, nor does it believe that it is the Commission's function to judge the social value of such a pricing scheme. The Commission recognizes that many items in our economy have a pricing structure in which some items contribute proportionately more to profit than to other items.

[392] This result does not follow directly from the rule, but from the funeral director's reluctance to disclose different prices to different people for the same items. A Rappaport, III–I–111, at 10–11; Oral Presentation of Tom Clark, GC, NFDA, at 154.

[393] *See, e.g.*, F. Galante, New Jersey funeral director, Tx 1734–35; T. Sheehan, Pres., New Jersey FDA, Tx 456–57; R. Johnson, Indiana funeral director, Tx 12,464–66; J. Wylie, Exec. Director, Florida FDA, Tx 8714–17; H. Coates, member, State Bd. of Embalmers and Funeral Directors of Kentucky, Tx 3978–79; M. Heitner, Minnesota funeral director, Tx 3340–41. *See also*, NSM comment on Revised Rule, XVI–159, at Appendix B.

[394] *See, e.g.*, G. Primm, Pres., Empire State FDA (NY), Tx 264; N. Panepinto, Director, New York, Bureau of Funeral Directing, Tx 300; S. Hausmann, Exec. Director, New Jersey FDA, Tx 533; M. Damiano, New Jersey funeral director, Tx 1311; C. Whigham, New Jersey funeral director, Tx 768; M. Waterston, Minnesota funeral director, Tx 3745–46; W. Kinder, Pres., Minnesota FDA, Tx 3282; P. Hultquist, California FDA, Tx 7602. *Cf.* J. Wylie, Exec. Director, Florida FDA, Tx 9723–24.

[395] The present legislative review provision is scheduled to terminate on September 30, 1982. If no other legislative review process applies after that date, the legislative review process will be considered concluded for the purposes of determining the effective date of the rule.

[396] As discussed previously, the purchase of a funeral is infrequent. Consequently, many consumers will not have exposure to price lists or other provisions of the rule for many years. Thus, the stimulus for price competition, at least initially, is likely to come from sellers rather than buyers. The extent to which new entrants begin to compete on the basis of price, or which existing sellers begin to compete or advertise prices, is likely to determine how quickly competition begins to effect the marketplace. Considering the industry's tradition opposition to price advertising, and other constraints on price competition and barriers to entry, it is difficult to predict how quickly such competition will emerge.

Sec.

Authority: Sec. 6(g) 38 Stat. 721 (15 U.S.C. 46(g); 80 Stat. 383, as amended, 81 Stat. 54 (5 U.S.C. 552).

§ 453.1 Definitions.

(a) *Accounting year.* "Accounting year" refers to the particular calendar year or other one year period used by a funeral provider in keeping financial records for tax or accounting purposes.

(b) *Alternative container.* An "alternative container" is a non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of cardboard, pressed-wood, composition materials (with or without an outside covering) or pouches of canvas or other materials.

(c) *Cash advance item.* A "cash advance item" is any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to, the following items: Cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

(d) *Casket.* A "casket" is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, or like material, and ornamented and lined with fabric.

(e) *Commission.* "Commission" refers to the Federal Trade Commission.

(f) *Cremation.* "Cremation" is a heating process which incinerates human remains.

(g) *Crematory.* A "crematory" is any person, partnership or corporation that performs cremation and sells funeral goods.

(h) *Direct cremation.* A "direct cremation" is a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

(i) *Funeral goods.* "Funeral goods" are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.

(j) *Funeral provider.* A "funeral provider" is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

(k) *Funeral services.* "Funeral services" are any services which may be used to care for and prepare deceased human bodies for burial, cremation or other final disposition; and arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

(l) *Immediate burial.* An "immediate burial" is a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

(m) *Outer burial container.* An "outer burial container" is any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

(n) *Person.* A "person" is any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(o) *Services of funeral director and staff.* The "services of funeral director and staff" are the services, not included in prices of other categories in § 453.2(b)(4) which may be furnished by a funeral provider in arranging and supervising a funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits and placing obituary notices.

(p) *Unfinished wood box.* An "unfinished wood box" is an unornamented casket made of wood which does not have a fixed interior lining.

§ 453.2 Price disclosures.

(a) *Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in paragraph (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) *Preventive requirements.* To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

(1) *Telephone price disclosures.* (i) Tell persons who call the funeral provider's place of business and ask about the terms, conditions, or prices at which funeral goods or funeral services are offered, that price information is available over the telephone.

(ii) Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists in paragraph (b)(2) through (4) of this section which reasonably answers the question and any other information which reasonably answers the question and which is readily available.

(2) *Casket price list.* (i) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. The list must contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. *Provided however,* that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information which is required by this paragraph (b)(2)(i) of this section.

(ii) Place on the list, whether a printed or typewritten list or other format is used, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) *Outer burial container price list.* (i) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In

lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. *Provided however,* that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information which is required by this paragraph (b)(3)(i) of this section.

(ii) Place on the list, whether a printed or typewritten list or other format is used, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."

(4) *General price list.* (i) Give a printed or typewritten price list for retention to persons who inquire in person about funeral arrangements or the prices of funeral goods or funeral services. When people inquire in person about funeral arrangements or the prices of funeral goods or funeral services, the funeral provider must offer them the list upon beginning discussion either of funeral arrangements or of the selection of any funeral goods or funeral services. This list must contain at least the following information:

(A) The name, address, and telephone number of the funeral provider's place of business;

(B) A caption describing the list as a "general price list";

(C) The effective date for the price list; and

(D) In immediate conjunction with the price disclosures required by paragraph (b)(4)(ii) of this section, the statement: "This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers, and newspaper notices. The prices for those items will be shown on your bill or the statement describing the funeral goods and services you selected."

(ii) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

(A) Forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;

(B) Receiving remains from another funeral home, together with a list of the services provided for any quoted price;

(C) The price range for the direct cremations offered by the funeral provider, together with: *(1)* A separate price for a direct cremation where the purchaser provides the container; *(2)* separate prices for each direct cremation offered including an unfinished wood box or alternative container; and *(3)* a description of the services and container (where applicable), included in each price;

(D) The price range for the immediate burials offered by the funeral provider, together with: *(1)* A separate price for an immediate burial where the purchaser provides the casket; *(2)* separate prices for each immediate burial offered including a casket or alternative container; and *(3)* a description of the services and container (where applicable) included in that price;

(E) Transfer of remains to funeral home;

(F) Embalming;

(G) Other preparation of the body;

(H) Use of facilities for viewing;

(I) Use of facilities for funeral ceremony;

(J) Other use of facilities, together with a list of facilities provided for any quoted price;

(K) Hearse;

(L) Limousine;

(M) Other automotive equipment, together with a description of the automotive equipment provided for any quoted price; and

(N) Acknowledgment cards.

(iii) Include on the price list, in any order, the following information:

(A) Either of the following:

(1) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual caskets, disclosed in the manner specified by paragraph (b)(2)(i) of this section; and

(B) Either of the following:

(1) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (b)(3)(i) of this section; and

(C) Either of the following:

(1) The price for the services of funeral director and staff, together with a list of the principal services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)"; or

(2) The following statement: "Please note that a fee for the use of our services is included in the price of our caskets. Our services include (specify)." The statement must be placed on the general price list together with casket price range, required by paragraph (b)(4)(iii)(A)*(1)* of this section, or together with the prices of individual caskets, required by (b)(4)(iii)(A)*(2)*.

(5) *Statement of funeral goods and services selected.* (i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

(A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;

(B) Specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and

(C) The total cost of the goods and services selected.

(ii) The information required by this paragraph (b)(5) of this section may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(6) *Other pricing methods.* Funeral providers may give persons any other price information, in any other format, in addition to that required by paragraph (b) (2), (3), and (4) of this section so long as the statement required by paragraph (b)(5) of this section is given when required by the rule.

§ 453.3 Misrepresentations.

(a) *Embalming Provisions.*—(1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires that a deceased person be embalmed when such is not the case;

(ii) Fail to disclose that embalming is not required by law except in certain special cases.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §§ 453.4(b)(1) and 453.5(2), funeral providers must:

(i) Not represent that a deceased person is required to be embalmed for

direct cremation, immediate burial, a funeral using a sealed casket, or if refrigeration is available and the funeral is without viewing or visitation and with a closed casket when state or local law does not require embalming; and

(ii) Place the following disclosure on the general price list, required by § 453.2(b)(4), in immediate conjunction with the price shown for embalming: "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not require you to pay for it, such as direct cremation or immediate burial."

(b) *Casket for cremation provisions.* (1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires a casket for direct cremations;

(ii) Represent that a casket (other than an unfinished wood box) is required for direct cremations.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(a)(1), funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without an outside covering), or pouches of canvas." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) *Outer burial container provisions.*—(1) *Deceptive acts or practices.* In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;

(ii) Fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) *Preventive requirement.* To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by § 453.2(b)(3)(ii), or, if the prices of outer burial containers are listed on the general price list, required by § 453.2(b)(4), in immediate conjunction with those prices: "In most areas of the country, no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave will not sink in. Either a burial vault or a grave liner will satisfy these requirements."

(d) *General provisions on legal and cemetery requirements.*—(1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in § 453.3(a)(1), § 453.3(b)(1), and § 453.3(c)(1), funeral providers must identify and briefly describe in writing on the statement of funeral goods and services selected (required by § 453.2(b)(5)) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) *Provisions on preservative and protective value claims.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) Represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;

(2) Represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.

(f) *Cash advance provisions.*—(1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case;

(ii) Fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, funeral providers must place the following sentence in the general price list, at the end of the cash advances disclosure, required by § 453.2(b)(4)(ii)(C): "We charge you for our services in buying these items," if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.

§ 453.4 Required purchase of funeral goods or funeral services.

(a) *Casket for cremation provisions.*—(1) *Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket other than an unfinished wood box be purchased for direct cremation.

(2) *Preventive requirement.* To prevent this unfair or deceptive act or practice, funeral providers must make an unfinished wood box or alternative container available for direct cremations, if they arrange direct cremations.

(b) *Other required purchases of funeral goods or funeral services.*—(1) *Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part.

(2) *Preventive requirements.* (i) To prevent this unfair or deceptive act or practice, funeral providers must:

(A) Place the following disclosure in the general price list, immediately above the prices required by § 453.2(b)(4)(ii) and (iii): "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected."

Provided, however, That if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our services" between the second and third sentences of the statement specified above herein; and

(B) Place the following disclosure on the statement of funeral goods and services selected, required by § 453.2(b)(5)(ii): "Charges are only for

those items that are used. If we are required by law to use any items, we will explain the reasons in writing below."

(ii) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

§ 453.5 Services provided without prior approval.

(a) *Unfair or Deceptive Acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(1) State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or

(2) Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

(3) The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) *Preventive requirement.* To prevent these unfair or deceptive acts or practices, funeral providers must include on the contract, final bill, or other written evidence of the agreement or obligation given to the customer, the statement: "If you selected a funeral which requires embalming, such as a funeral with viewing you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

§ 453.6 Retention of documents.

To prevent the unfair or deceptive acts or practices specified in § 453.2 and § 453.3 of this rule, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in § 453.2(b) (2) through (4), as applicable, for at least one year after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by § 453.2(b) (5) for at least one year from the date on which the statement was signed.

§ 453.7 Comprehension of disclosures.

To prevent the unfair or deceptive acts or practices specified in § 453.2 through § 453.5, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner.

§ 453.8 Declaration of intent.

(a) Except as otherwise provided in § 453.2(a), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specified in this rule;

(b) The provisions of this rule are sparate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

(c) This rule shall not apply to the business of insurance or to acts in the conduct thereof.

§ 453.9 State exemptions.

If, upon application to the Commission by an appropriate state agency, the Commission determines that:

(a) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule;

then the commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

§ 453.10 Mandatory review.

No later than four years after the effective date of this rule, the Commission shall initiate a rulemaking amendment proceeding pursuant to section 18(d)(2)(B) to determine whether the rule should be amended or terminated. The Commission's final decision on the recommendations of this proceeding shall be made no later than eighteen months after the initiation of the proceeding.

Dissenting Statement of James C. Miller III, Chairman, Federal Trade Commission on Funeral Rule

I cannot in good conscience go along with a final rule affecting the funeral industry at this time. I do not oppose a rule in principle. Indeed, I've always said that this is an area worthy of Commission investigation. But for the reasons set forth below, I believe that action at this time is ill-advised.

Furthermore, I want to make it clear that I respect the views held by my colleagues on the Commission. This is neither a Republican nor a Democratic issue. It is neither conservative nor liberal. The question is whether the action taken today can be defended. I believe it cannot.

The basic reason for my opposition to today's action is the lack of evidence in the record. That record is woefully inadequate for a proceeding that has lasted 10 years. In my view, the Commission does not have a reliable description of the industry, much less a working knowledge of how it operates. The facts presented are often contradictory, are heavily anecdotal, and may not be representative of industry practices. From what description can be gleaned from the record, two theories seem to fit equally well: (a) That the industry is operating quite effectively, and (b) that the industry is vitiated with market imperfections crying out for governmental intervention.[1]

Nor do we have any basis in the record to conclude that the rule approved today will adequately deal with alleged market imperfections, *assuming* they exist. For example, the requirement that services be "unbundled" can easily be circumvented by funeral directors' simply charging higher prices for services a' la carte. (The point about the price of a new automobile's being far less than the summed prices of all new parts is particularly relevant here.)

Moreover, certain provisions may actually harm consumers. For example, the only empirical evidence we have of the effects of forced unbundling (in Minnesota) suggests increased costs to consumers. Also, the requirement of prior authorization before embalming may well raise costs to consumers, diminish their satisfaction with the overall service, or have both effects.

Because of the paucity of evidence in the record, I believe it is likely the courts would sustain a legal challenge to the rule. This risk could have been mitigated if the Commission had taken my recommendation and had reopened the rulemaking record for the submission of additional evidence. The Commission's own "baseline" study, in particular, should have been entered into the record, even if this would have meant a few months delay while the Commission accepted public comment on it.

Portions of the baseline study seriously challenge the theory of market imperfections that is implicit in the Commission's action. For those who think the baseline study actually supports the Commission's rule, it is ironic that by refusing to admit it into evidence the Commission forgoes the opportunity to use the study's results to support the rule, but enable anyone to use it in challenging the Commission's action.

Beyond the integrity and sufficiency of the formal record—on which of course the Commission's decision must be based—there is one other matter I wish to touch upon

[1] The memoranda of Timothy J. Muris, Director of the Bureau of Consumer Protection, and Robert D. Tollison, Director of the Bureau of Economics, disclose in detail these deficiencies in the record.

briefly. I believe that the Commission's action today will make it considerably more difficult to resist efforts by the "learned professions" to obtain exemption from FTC laws concerning unfairness and deception, and from FTC enforcement of the antitrust laws. Indeed, there is a plausible argument that the objects of the Commission's action—funeral directors—would be exempt under the language already adopted by the Senate Commerce Committee ("Federal Trade Commission Amendments Act of 1982").

In conclusion, I fear that the Commission has deceived a very vulnerable segment of American consumers. The Commission's action is deceptive because it raises expectations of lower prices for funerals and better service, when in fact we have little evidence to believe the rule would have these effects. It is also deceptive because the rule may well be reversed in the courts. As if this were not enough, the Commission's action places in further jeopardy a much more important matter—the Commission's efforts to police anticompetitive, unfair, and deceptive practices in the professions.

In view of the inadequacy of the record, I respectfully dissent from the Commission's action. In the larger view of all that is at stake, I fear that in this case the Commission is showing signs of returning to its errant past of regulating first and asking the right questions later.

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Part IV

Office of Personnel Management

Demonstration Project: An Integrated Approach to Pay, Performance Appraisal, and Position Classification

OFFICE OF PERSONNEL MANAGEMENT

Demonstration Project: An Integrated Approach to Pay, Performance Appraisal, and Position Classification

AGENCY: Office of Personnel Management.

ACTION: Notice of amendment of demonstration project plan and inclusion of technical specialists, administrative specialists, and clerical/assistant positions in the demonstration project.

SUMMARY: This notice identifies the Technical Specialist, Administrative Specialist, and Clerical/Assistant career paths by classification level and shows their relationships to current grade levels. In addition, the notice modifies the amount of salary increase for promotions, changes the labeling of performance groups, permits the combination of performance rating groups within RIF retention groups, and revises the description of the performance rating reconsideration process.

EFFECTIVE DATE: September 19, 1982.

FOR FURTHER INFORMATION CONTACT:

(1) In San Diego, California: Susan Rainville (714) 225–2131;
(2) In China Lake, California: Robert M. Glen (714) 939–2434;
(3) In Washington, D.C.: Donald Hill (202) 254–6486.

SUPPLEMENTARY INFORMATION:

Background

The Office of Personnel Management (OPM) approved a demonstration project, "An Integrated Approach to Pay, Performance Appraisal, and Position Classification for More Effective Operation of Government Organizations," and published the final project plan in the **Federal Register** on Friday, April 18, 1980 (45 FR 26504). Under the section "Types and Numbers of Participating Employees" (45 FR 26513), the approved project plan provides for the addition of other categories of employees as project number limitations and successful experience permit, subject to consultation and agreement with OPM.

Administrative personnel at the GS–12 level entered the demonstration project on January 11, 1981, to complete classification/pay ban level III. In a notice published in the **Federal Register** on July 28, 1981 (46 FR 38660), OPM identified the technician career path by classification level and showed its relationship to grade levels in the General Schedule. Technicians entered the demonstration project on August 23, 1981. In addition, the Notice amended procedures for converting employees existing from the demonstration project to positions in the General Schedule.

Additional Categories of Participating Employees.

Administrative and technical specialists GS 5–11 will enter the Navy Demonstration Project this year on or after September 19, 1982. Clerical and other assistant positions are scheduled to enter the demonstration project in August 1983. However, management's ability to handle additional personnel and the absence of clerical employee objection to early entrance into the project persuaded OPM to approve Navy's request for early entrance of clerical and assistant positions into the demonstration project. Therefore, all clerical/assistant positions at the Naval Ocean Systems Center (NOSC) only will enter the demonstration project on or after September 19, 1982. Because demonstration projects are limited to 5,000 employees, both Centers cannot enter their total clerical work force. Therefore, to provide for a realistic evaluation of a total clerical career path, the Naval Weapons Center (NWC) will limit the project to the other career paths to allow NOSC to use the available numbers to cover clerical/assistant positions.

Project Plan Modifications

The technician career path has been modified by NOSC and the administrative and technical specialist career paths modified by both Centers as indicated in revised Table 5.

The performance appraisal section has been modified to eliminate specific requirements to use the performance labels "O, E, M, B and N." Conforming changes have been made to the RIF section which refers also to "O, E, M, B and N." Additionally, the Centers are permitted to combine performance rating groups within RIF retention groups. The principle of performance as the primary retention criterion is unchanged, as is the relative importance of the remaining factors, tenure, veterans' preference and length of service. The two lower performance rating groups (formerly "B" and "N"), which both represent marginal performers, can be combined under this modification into the lowest RIF retention group.

The provision which specifies the minimum amount an employee may receive at the time of promotion has been modified.

The wording of the "Reconsideration of Performance Rating" section has been modified to more closely parallel the Navy grievance procedure under which Merit Pay performance ratings are reconsidered. The Navy grievance procedure had not been developed at the time the Project Plan was written. This revision will simplify the procedure while protecting employees' due process rights.

OPM Review of Navy Project Plan Modifications

Draft modifications to the Navy demonstration project were transmitted to OPM via telecopier in January 1982 and discussed by NOSC, NWC, and OPM staff in a meeting held at OPM on January 19, 1982. OPM staff members concurred generally with the requested modifications to the project plan. The Commanders of the Naval Weapons Center and the Naval Ocean Systems Center sent a joint letter dated April 9 and 16, 1982 to OPM requesting an August 1982 entry into the demonstration project of administrative and technical specialists at both Centers and clerical/assistants at NOSC only. The letter contained a description of the demonstration career paths and pay levels and requested approval of other project modifications. OPM program staff concurred with the proposed modifications to the project plan and asked NWC and NOSC to proceed with employee discussion and informal hearings. Briefings and meetings were held with employees during April and May. Various written materials and articles were distributed to employees also.

Comments

Informal hearings during which employees could comment on the entry of additional employees into the project plan, the proposed career paths and pay levels, and project modifications were held in Hawaii on May 12, 1982, in San Diego on May 18, 1982, and in China Lake on May 26, 1982. Suitable periods were provided for written comments. Three employees made comments during the hearing at Hawaii, none at San Diego, and four at China Lake. Twelve employees at NOSC and four at NWC submitted written comments. These comments were directed at the following concerns:

1. Six of the eight persons commenting from the Naval Weapons Center objected to the change in the administrator/specialist pay band in which GS–11 was moved from level II to level III to form a pay band composed of GS–11 and GS–12. GS–13 was removed from level III. An administrative employee under the modification must

now be moved up by positive management action to the DP career band which contains both GS–12 and 13. Employees complained that the modification to the career paths and pay levels (a) deviated from earlier understandings and proposals for the administrative career paths and pay levels; (b) moved away from the stated objective of the demonstration project to base salary on performance and returned to the old classification system with its emphasis on the full journeyman level; and (c) set up separate career paths for administrators (DA) and specialists (DS) which are similar to the one-grade-advancement-level technician career path (DT), thereby considering them as less than professionals, in spite of their degrees and credentials, with the implication that they are "less valued" to the organization. In responding to OPM's inquiry concerning these comments and the reasons for the change in career paths, NWC explained that it decided to separate the administrator/specialist career paths, redefine the level III in those career paths as 11/12 instead of 11/13 after considering the following factors:

—Lack of honogeneity of the administrative and specialist population.
—Pay equity within NWC and throughout the Federal system.
—Multiple full performance levels in administrative/specialist occupations.
—Higher starting pay for scientists and engineers and higher salary (grade levels) in general in the market place.
—Different rates of development and promotions for the occupational groups.
—Degree vs non-degree (scientists and engineers require a degree or equivalency).

NWC management decided that the advantages of resolving "the pay equity" issue outweighed the disadvantages of not resolving the "relative status" issue.

2. The remaining two comments from NWC were complaints about (a) management's alleged emphasis on degrees and time in service, rather than properly on performance, and (b) a system which permits an employee to become a supervisor without getting a salary increase.

3. Four NOSC employees offered their support for the demonstration project. Three of the four offered suggestions for further improvement of the project. The employees suggested that the Centers should:

—Consider the quality and total effort expended, in addition to quantitative measures, when assessing performance. Additionally, the Centers should base merit pay increases on salary amounts rather than incentive points.
—Create additional career paths which permit movement from the clerical/assistant career path to the administrative specialist career path.
—Eliminate barriers between division secretary jobs (GS–5) and department secretary jobs (GS–6) and reward their accomplishments.

4. Four NOSC employees objected to modification of the RIF section and one employee urged management to go further than it has gone by suggesting an additional modification. The suggested modification is that NOSC give managers flexibility to make as many divisions of retention groups as there are performance ratings and assess performance on the immediate past performance rating. The objections are:

—Basing retention standing on only one performance rating. Employees suggested use of a weighted point system.
—Including an employee with a "below objectives" performance rating in the lowest retention standing with employees who have been given the "needs improvement" performance rating. Suggested that retention standing be based on two successive performance rating periods.
—Placing too much emphasis on subjective performance appraisals.
—Determining retention in a system which judges performance in relation to current pay. Inequities occur because entry-level employees within a pay band will be judged against lower salaries, and higher ratings will be easier to achieve. In the event of RIF, the system will be biased toward retaining the less experienced entry level employee.

5. Three NOSC employees commented on the performance appraisal system. One employee stated that performance objectives were watered down and too subjective and suggested that points be assigned. Another employee complained that upper-level management changes performance reward recommendations of the employee's immediate supervisor and modifies the original performance rating structure. The third employee noted that the point distribution system causes higher graded personnel to receive a higher percentage of the two highest performance categories than lower graded personnel.

6. One NOSC employee requested that the 10% promotion policy be retained because such factors as date of pay raise, being at the bottom of a pay level because of a recent promotion, and being at the top of a pay level for a long time because of unavailable promotions cause inequities.

7. Other comments were phrased as questions about aspects of the project, such as the combination of former grade levels, dollar value of performance award points, and the difference between career levels.

Office of Personnel Management.

Donald J. Devine,

Director.

The demonstration project plan, An Integrated Approach to Pay, Performance Appraisal, and Position Classification for More Effective Operation of Government Organizations, published in the **Federal Register** on Friday, April 18, 1980, 45 FR 26504–26543, amended by a Notice published in the **Federal Register** on Tuesday, July 28, 1981, 46 FR 38660–38661, is further amended as follows:

1. *Pen and Ink Changes to Methodology Section.* In 45 FR 26507, under the section titled "Methodology", delete the words "one of five" in item (2). Change the title of Figure 1 to "An Example of a Pay and Performance Plan."

2. *Career Paths and Pay Levels as Related to Current GS Grade Levels.* Delete the section "Demonstration Elements, Classification levels", and Tables 4, 4A and 5, which are found in 45 FR 26513–26516 and 46 FR 38660–38661 and replace with the following new text and revised Tables 4 and 5:

Demonstration Elements

Classification levels. The heart of the project is the grouping of the currently used General Schedule (Grades GS 1–18 and PL) pay/classification system into fewer, broader levels of classification. The current GS system will remain as pay anchor for the project.

The project features five discrete career paths as follows: Demonstration Professional (DP)—Scientific, Engineering, and appropriate Supervisory, Managerial, and Specialist positions.

Demonstration Administrative (DA)—Professional Administrative positions;
Demonstration Specialists (DS)—Technical Specialist positions;
Demonstration Technical (DT)—Technician positions;
Demonstration General (DG)—Secretarial, Clerical and Assistant positions.

Table 4 illustrates typical (not all inclusive) GS series that comprise these Career Paths.

The broad pay bands will serve to enhance competitive recruitment of

quality candidates, as well as allow tangible performance-linked distinction between existing employees. Classification of employees under this system will be less burdensome and less susceptible to judgmental errors in precise grade placement.

The system, in fact, incorporates a rank in person system with its inherent flexibilities while retaining through the broad groupings the overall benefit of rank-in-job distinctions that can be reasonably applied by supervisors and managers.

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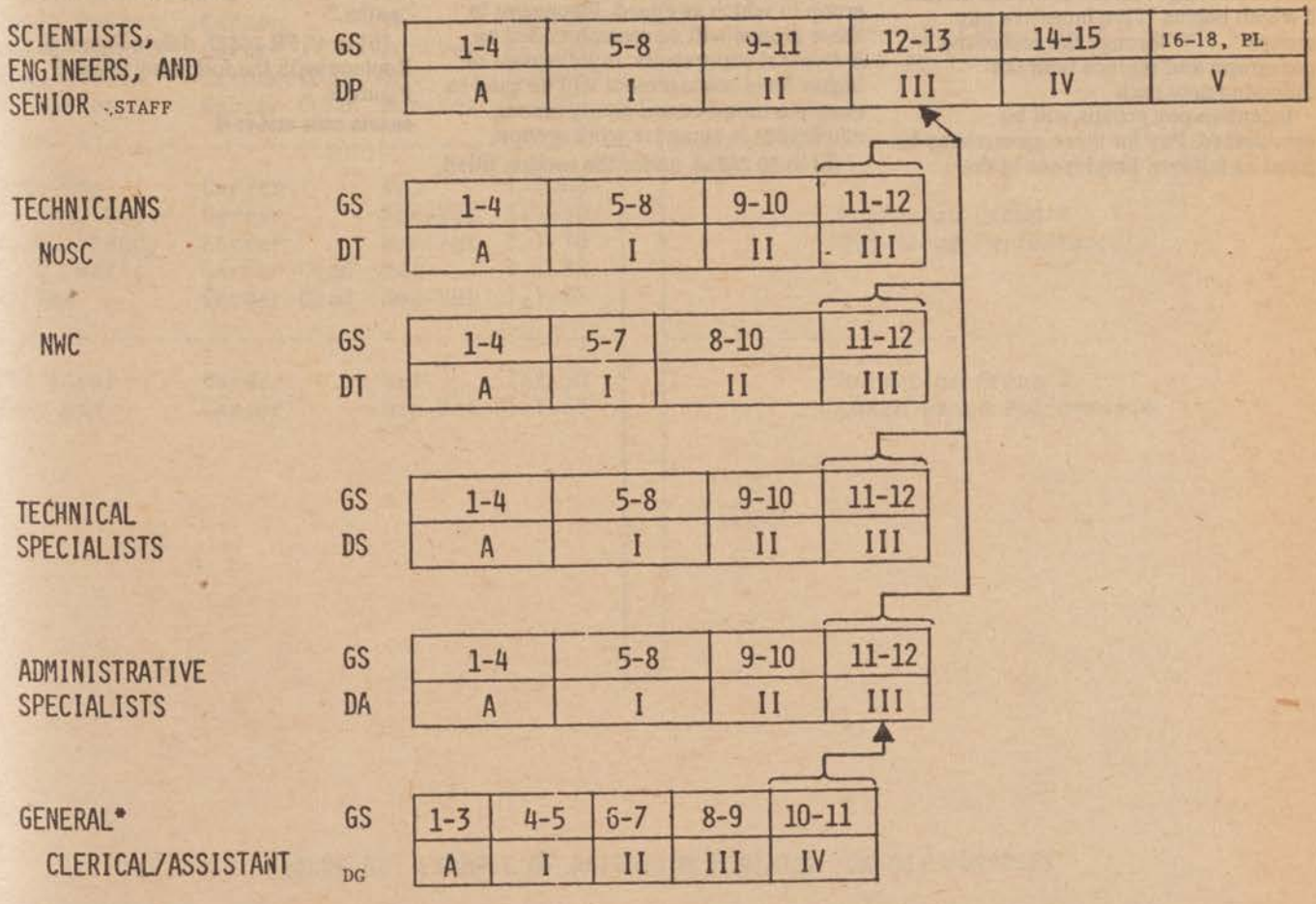
TABLE 4. TYPICAL GS SERIES IN CAREER PATHS

DP	DA	DS	DT	DG
180, 401, 403, 408, 413, 701, 801, 806, 808, 810, 830, 850, 855, 861, 893, 896, 899, 1301, 1306, 1310, 1313, 1320, 1321, 1350, 1360, 1515, 1520, 1529, 1550, 1599, Other Professional Scientific and Engineering Occuptions and Higher Level Employees from Other Career Paths as Shown by Arrows in Table 5.	201, 212, 221, 230, 235, 260, 301, 341, 343, 346, 501, 505, 510, 560, 1001, 1020, 1060, 1071, 1081, 1082, 1083, 1102, 1410, 1412, 2001, 2003, 2101 And Other Two Grade Interval Administrative Positions.	132, 330, 334, 340, 345, 391, 392, 393, 905, 1150, 1640, 1670, 1910, And Other Two Grade Interval Technical Support Positions.	332, 335, 404, 802, 818, 856, 895, 1060, 1152, 1311, 1341, 1521, 1960, And Other One Grade Interval Technician Support Positions.	019, 134, 181, 203, 204, 302, 303, 304, 305, 309, 312, 318, 322, 344, 350, 359, 361, 385, 388, 394, 525, 540, 544, 561, 590, 904, 991, 1087, 1105, 1106, 1107, 1411, 2005, 2050, 2132, 2134, And Other One Grade Interval Clerical and Assistant Type Positions.

TABLE 5. CAREER PATHS AND PAY LEVELS AS RELATED TO CURRENT GS GRADE LEVELS



* NOSC ONLY. NWC PATH AND ENTRY DEFERRED

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3. *Modification of Classification/ Performance/Qualification Standards Section.* In 45 FR 26516, under the section titled "Classification/ Performance/Qualification Standards", delete the first six paragraphs which begin with "The Classification levels for professionals * * *" through and including the paragraph which begins with "Level V." Replace with the following new text:

Within each career path, classification levels will differentiate between broad groups of employees based on degree of difficulty and responsibility.

Level A has been included, which covers cooperative education positions as well as apprentices and student aides.

Level V will be used where necessary to accommodate GS–16 through Public Law level candidates who are not offered or who decline Senior Executive Service (SES) membership.

4. *Modification of Incentive Pay Group Labels.* (a) In 45 FR 26516, under the section titled "Incentive Groups", delete starting with the sentence on line 5 which begins "Five incentive pay groups * * *" through the end of the paragraph and replace with the following new text:

Incentive pay groups will be established. Pay for these groups may be fixed as follows. Employees in the lowest performance category will not receive a salary increase. Employees in each of the remaining higher performance rating categories may receive correspondingly larger salary increases from available funds.

(b) Change the title of Figure 3 to read "Example of Incentive Pay Groupings Within Each Level."

5. *Modification of Mechanics of Incentive Pay and Promotions.* (a) In 45 FR 26517, under the section titled "Schedule and Mechanics of appraisals and Incentive Groupings," delete starting with the fourth sentence which begins with "In Incentive Group N * * *" through the rest of the paragraph and replace with the following new text:

Employees whose performance needs substantial improvement (but is not low enough for adverse or performance-based action) will be rated in the lowest incentive group. Those in this group will receive no salary increase. Higher performing emloyees will be placed in higher incentive groups and will receive salary increases based on the incentive group to which assigned. Placement in these groups will be recommended by individual supervisors. Involvement of higher level management will be used to ensure a broad-based equity among employees in separate work groups.

(b) In 45 26518, under the section titled "Compensation", delete the first sentence of the second paragraph and replace with the following new text:

For discussion purposes, a five incentive grouping system (O, E, M, B, N) as depicted earlier in Figure 3 will be used. Incentive group N is a zero increase category.

(c) In 45 FR 26518 and the continuation on page 26519, change the title of Table 6 to read "Example of Distribution of Individual Incentive Funds."

(d) In 45 FR 26519, under the section titled "Promotions," delete the words "increase of no less than 10%", and replace with the following text: "increase of up to 10% or the minimum salary of the level to which promoted, whichever is higher."

6. *Modification of the Reduction in Force Section.* (a) In 45 FR 26520, under the section titled "Reduction in Force," delete from the first sentence the words "fields (Technical Professional, Administrative, Technical, and Clerical)." and replace with the word "paths."

(b) In 45 FR 26521, delete Figure 5. Replace with the following revised Figure 5.

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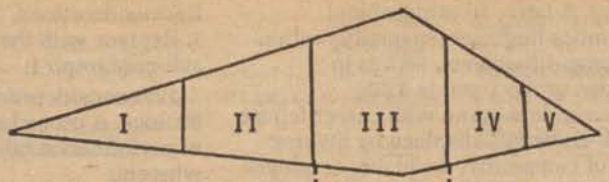

Classification Levels (pay bands) within a career path

A Level (pay band)

Electronics Engineer, Level III
(Weapons Systems)
(Development)

A Single Competitive Level

NAME	TENURE	PREF	SCD	
Cecil Peters	Career	Vet	1-6-50	Retention Group 1
David Shine	Career	Non-Vet	6-30-48	High Performance
Elsa Person	Career Cond	Vet	5-20-80	
Hi Markes	Career Cond	Non-Vet	5-1-80	
John Doe	Career	Vet	1-1-60	Retention Group 2
A. Nony Moose	Career	Non-Vet	1-1-50	Mid-Range Performance
I. R. Steddy	Career	Non-Vet	1-1-70	
D. D. Wells	Career Cond	Vet	1-1-82	
Al Tow	Career Cond	Non-Vet	1-1-81	
Mel Steel	Career	Vet	1-1-50	Retention Group 3
Tony Way	Career	Non-Vet	1-1-65	Lower Range Performance

FIGURE 5. EXAMPLE OF RETENTION REGISTER FOR RIF PURPOSES

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(c) In 45 FR 26522, delete the chart and all text following the chart through the end of the section. Replace with the following new chart and text:

Incentive pay group (retention group)	Career (I) or career conditional (II)	Veteran (A) or non veteran (B)	30-Compensable (D)
1	I	A	D.
1	I	A	
1	I	B	
1	II	A	D.
1	II	A	
1	II	B	
2	I	A	D.
2	I	A	
2	I	B	
2	II	A	D.
2	II	A	
2	II	B	
3	I	A	D. etc.

The incentive pay group is the primary displacement tool. Performance rating groups may be combined into two or more "retention groups." Within each competitive level, employees in the higher retention group(s) are placed at the top of the retention register in standard tenure, veterans' preference, and length of service order. Employees in the lower performance group(s) are placed at the bottom of the retention register, in standard order, and are first to be released from the competitive level. Individuals in the higher retention groups always displace those in the lower group(s).

For discussion purposes, the higher retention group will be called Performance Group 1, and the lower, Performance Groups 2 and 3 respectively. The following example is an illustration of how RIF rules are applied. A Level III professional Electronics Engineer (specialty) within this competitive level, who is in retention group 1 and is a 30-compensable veteran with career tenure (1–I–A–D), would displace by inverse order of competitive level any employee of lesser retention standing in the same competitive level.

The same individual could bump any individual in the same professional career path with a retention standing of 1–I–A or lower who occupies a position for which the employee is qualified.

If this employee is unable to displace someone in the same competitive level or bump someone in another competitive level in the professional career path, the employee could retreat to a level II position he/she was promoted from or through, if the position is occupied by someone of lower subgroup or within the same subgroup but of lesser service computation date.

For retreat purposes (competition for a position from or through which the employee was promoted), employees in the lower retention group(s) may compete for lower level positions occupied by employees in the higher retention group(s). This special retreat provision recognizes that lower performing employees have reasonable potential for higher quality performance in a lower level position that they formerly held on were promoted through.

7. *Modification of the Adverse Actions and Reconsiderations Section.* (a) In 45 FR 26522, under the section titled "Adverse Actions and Reconsiderations," delete sub-paragraph 1. Replace with the following revised sub-paragraph 1:

1. Reconsideration of Performance Ratings. A procedure for reconsideration of performance ratings is established wherein:

a. The deciding official is at a higher organization level than the individual who approved the original rating; and

b. When considered necessary by the deciding official, a fact finder from outside the chain-of-command of the employee may be appointed. The fact finder will gather and report the pertinent facts, and when requested, make a recommendation to the deciding official. A member of the personnel office staff will be available to assist the fact finder and the deciding official.

c. The decision of the deciding official is final.

The intent of the reconsideration process is to make it as informal as possible with a minimum of paperwork and at the same time to make it equitable to the affected employee.

(b) In 45 FR 26522, under the section titled "Adverse Actions and Reconsiderations," delete from the title and text of subparagraph 2 references to "N and B ratings" and substitute "lower performance ratings." In the second paragraph of subparagraph 2, delete the phrase "Incentive Group N." Replace with "the lowest performance rating group."

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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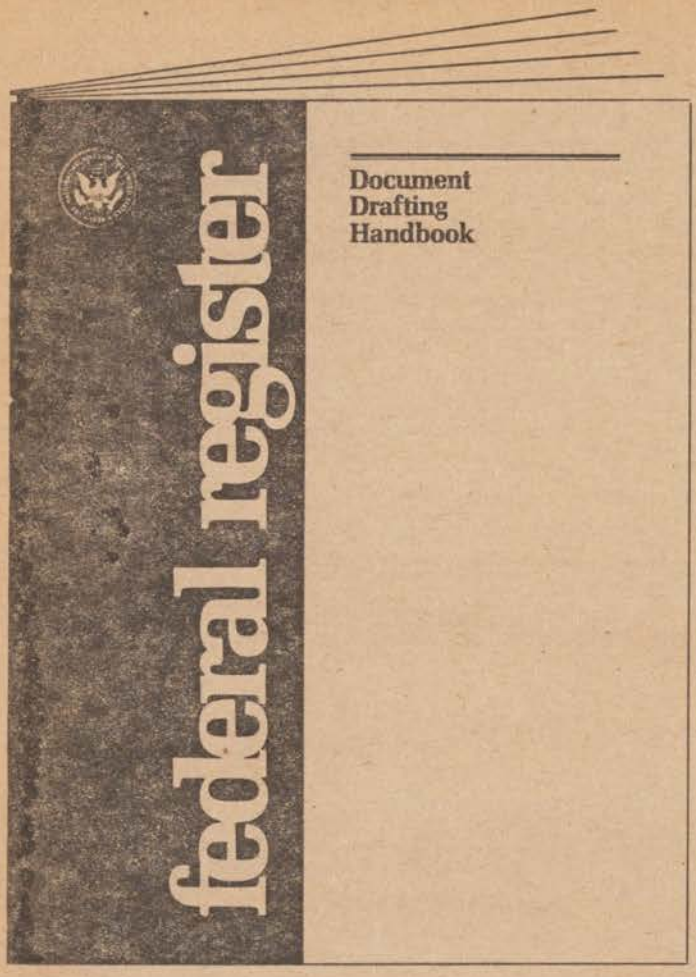

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