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Wednesday
August 18, 1982

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority; American Indian Programs

AGENCY: Agriculture Department.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to reflect the transfer of responsibilities for the coordination of the Department's American Indian programs.

EFFECTIVE DATE: August 18, 1982.

FOR FURTHER INFORMATION CONTACT: Bill Mills, Acting Resource Manager, Office of Governmental and Public Affairs, U.S. Department of Agriculture, Washington, D.C. 20250 (202–447–4336).

SUPPLEMENTARY INFORMATION: The delegations of authority by the Secretary of Agriculture and General Officers are being amended to reflect the transfer of authority, from the Under Secretary for Small Community and Rural Development to the Assistant Secretary for Governmental and Public Affairs, for the coordination of the Department's American Indians assistance programs, with the exception of civil rights activities. Coordination of civil rights activities relating to American Indians continues to be the responsibility of the Assistant Secretary for Administration.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Lastly, this action is not a rule as defined by Pub. L. 96–354, the Regulatory Flexibility Act and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 2 reads as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, unless otherwise noted.

Subpart C—Delegation of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

§ 2.23 [Amended]

2. Section 2.23 is amended by removing and reserving paragraph (f).

3. Section 2.29 is amended by adding a new paragraph (e) as follows:

§ 2.29 Delegations of authority to the Assistant Secretary for Governmental and Public Affairs.

* * * * *

(e) *Related to Indian Affairs.* Coordinate the Department's programs involving assistance to American Indians except civil rights activities.

Dated: August 12, 1982.

John R. Block,

Secretary of Agriculture.

[FR Doc. 82–22338 Filed 8–17–82; 8:45 am]
BILLING CODE 3410–01–M

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO–361–A19]

Milk in the Chicago Regional Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action lowers the shipping requirements for pool supply plants under the Chicago Regional milk order for the months of September, October, November and December. Conforming changes in the limits on diverted milk are provided for the same months. This action is based on industry proposals considered at a public hearing held March 30, 1982. The amendments are needed to reflect current marketing conditions and to assure orderly marketing in the Chicago Regional area.

EFFECTIVE DATE: September 1, 1982.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202/447–7311).

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued March 10, 1982; published March 16, 1982 (47 FR 11283).

Recommended Decision: Issued June 30, 1982; published July 6, 1982 (47 FR 29247).

Final Decision: Issued August 2, 1982; published August 5, 1982 (47 FR 33974).

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* A public hearing was held upon a proposed tentative marketing agreement and a proposed order regulating the handling of milk in the Chicago Regional marketing area.

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than September 1, 1982. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The recommended decision of the Deputy Administrator, Marketing Program Operations, was issued June 30, 1982, and the decision of the Assistant Secretary containing all amendment provisions of this order was issued August 2, 1982. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective September 1, 1982, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register.** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Chicago Regional marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. In § 1030.7, the introductory text of paragraph (b) is revised to read as follows:

§ 1030.7 Pool plant.

* * * * *

(b) A supply plant or unit of supply plants described in paragraph (b)(6) of this section from which the quantity of fluid milk products (except filled Milk) and condensed skim milk shipped or transshipped and physically unloaded into plants described in paragraph (b)(2) of this section as a percent of the Grade A milk received at the plant(s) from dairy farmers (except dairy farmers described in § 1030.12(b)) and handlers described in § 1030.9(c), including producer milk diverted pursuant to § 1030.13 but excluding packaged fluid milk products that are disposed of from such plant(s) as route disposition, is not less than 25 percent for September, 30 percent for each of the months of October and November, and 20 percent for all other months, subject to the following additional conditions:

* * * * *

2. Section 1030.13(d)(3) is revised to read as follows:

§ 1030.13 Producer milk.

* * * * *

(d) * * *

(3) Milk diverted to a nonpool plant(s) for the account of the operator of a pool plant, or a handler described in § 1030.9(b), may not exceed 70 percent during the months of September, October, and November, and 80 percent during the months of December through March of the total quantity of producer milk for which it is the handler (or, in the case of a cooperative the producer milk that the cooperative association causes to be delivered to or diverted from pool plants) subject to temporary revision of the specified percentages pursuant to § 1030.7(b)(5);

* * * * *

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

Effective date: September 1, 1982.

Signed at Washington, D.C., on: August 12, 1982.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82-22481 Filed 8-17-82; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 1, 1b, 2, 3, 3a, 3c, 4, 12, 16, 25, 32, 33, 34, 35, 41, 45, 131, 152, 153, 154, 156, 157, 158, 250, 270, 271, 275, 281, 282, 284, 286, 292, 375, 385, and 388

[Docket Nos. RM78-22-000, RM78-22-010, RM78-22-011, RM78-22-012; Order No. 225-A]

Revision of Rules of Practice and Procedures to Expedite Trial-Type Hearings

Issued: August 12, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing, clarifying final rule, and making corrections to final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order denying three applications for rehearing of the final rule that reorganizes, revises in part, and updates the Rules of Practice and Procedure in order to expedite trial-type hearings at the Commission. The order also provides clarification of certain sections of the final rule and makes three corrections to the final rule to eliminate potential ambiguities and uncertainty.

EFFECTIVE DATE: The final rule, as corrected, is effective on August 26, 1982.

FOR FURTHER INFORMATION CONTACT:
Fredric D. Chanania, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426; (202) 357–8033.

SUPPLEMENTARY INFORMATION:

I. Introduction

On April 28, 1982, the Federal Energy Regulatory Commission (Commission) issued a final rule which reorganizes, revises in part, and updates the Rules of Practice and Procedure for trial-type hearings at the Commission.[1] The final rule places the Rules of Practice and Procedure in new Part 385 of the Commission's regulations, effective on August 26, 1982. The final rule also places the public information regulations into new Part 388, removing them from Part 1.

With respect to oil pipeline filings and proceedings, the Commission is applying the new Rules of Practice and Procedure and discontinuing use of the procedural regulations of the Interstate Commerce Commission (ICC), 49 CFR Part 1100, except for the ICC's *ex parte* rules and modified procedures. The *ex parte* rules and modified procedures are being retained pursuant to the savings provisions in section 705 of the Department of Energy Organization Act (DOE Act) (42 U.S.C. 7295), under which the ICC regulations governing oil pipeline proceedings were transferred to the Commission for use until replaced by the Commission's own procedural rules.

II. Applications for Rehearing

The Commission has received timely applications for rehearing of the final rule from the Association of Oil Pipelines (AOPL) [2] (Docket No. RM78–22–010), Phillips Petroleum Company (Phillips) (Docket No. RM78–22–011), and Southern Union Gathering Company (Southern) (Docket No. RM78–22–012). On June 25, 1982, the Commission granted rehearing of the final rule in this docket solely for the purpose of further consideration.

A. Objections to Rules of Practice for Oil Pipeline Proceedings

AOPL challenges the Commission's decision to make the Rules of Practice and Procedure found in new Subparts H (shortened procedures), S (miscellaneous), U (appearance and practice before Commission), and V (separation of functions only) applicable to oil pipelines, while retaining the ICC's procedural rules on modified procedures and *ex parte* communications. AOPL claims that the Commission did not afford adequate notice of the regulatory scheme adopted in the final rule, failed to consider historical and statutory differences between the oil pipeline and the electric and natural gas industries in developing the final rule, and lacked a rational basis for retaining the ICC modified procedures and *ex parte* rules.

The Commission does not believe that AOPL's arguments warrant modifying the final rule. First, and perhaps most importantly, the Notice of Proposed Rulemaking (46 FR 17023, March 17, 1981) specifically outlined the rules to be applicable to oil pipeline proceedings. In particular, the NOPR indicated that the oil pipelines would be subject to the Rules of Practice and Procedure of the Commission, except for the continued applicability of the ICC's modified procedures and *ex parte* rules (46 FR at 17023–25). In addition, AOPL filed comments in response to the NOPR on this very issue. Accordingly, the Commission believes that there was sufficient notice to AOPL of the provisions of the final rule, as required under the Administrative Procedure Act, 5 U.S.C. 553(b).[3]

In promulgating the final rule, the Commission has taken into consideration the relevant differences between the oil pipeline and the electric utility and natural gas industries, and the statutes governing those industries. The Commission remains convinced that operating under two separate sets of procedural rules is administratively undesirable and does not contribute to the expeditious discharge of the Commission's responsibilities.[4] AOPL has not demonstrated how the oil pipelines are significantly prejudiced by the requirement that they comply with the same Rules of Practice and Procedure as the electric utility and natural gas industries.[5] If circumstances warrant changes in the regulations after more experience is gained in oil pipeline proceedings, the Commission will act at that time and AOPL can then raise the issue of the applicability of Subparts H, S, U, and V.

The Commission's retention of the ICC modified procedures and *ex parte* rules for oil pipeline proceedings maintains the status quo. Oil companies were subject to these rules when they were within the ICC's jurisdiction. These same rules have been in continuous effect at the FERC since the transfer of jurisdiction under the DOE Act in 1977. The Commission, within its statutory authority,[6] has elected not to alter their applicability at this time. The appropriate point at which to consider the substantive issues raised by AOPL is during any future reconsideration of the *ex parte* rules and modified procedures now applicable to oil pipelines.

The final rule also makes clear that, in the case of any inconsistency between the retained ICC modified procedures and *ex parte* rules and the newly revised Rules of Practice and Procedure, the ICC rules will continue to apply.[7] The Commission will, of course, be guided by judicial decisions on impermissible *ex parte* contacts or communications.

Finally, AOPL urges the Commission to retain the ICC code of conduct for practitioners [8] which AOPL asserts is more detailed than the standard for ethical behavior set forth in Rule 2102.[9] Rule 2102, among other things, provides for disqualification of practitioners that lack requisite qualifications or that have acted in an unethical or professionally improper manner. Rule 2102 also permits exclusion and suspension of persons

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[1] Docket No. RM78–22–000, Order No. 225, 47 FR 19014 (May 3, 1982).

[2] AOPL is an association of common carrier oil pipelines, including 95 oil pipelines that are subject to the Commission's jurisdiction.

[3] *See, e.g.*, Pennzoil Co. v. FERC, 645 F. 2d 360, 371 (5th Cir. 1981); Texaco, Inc. v. FEA, 531 F.2d 1071, 1082 (Temp. Emer. Ct. App. 1976); District of Columbia v. Train, 521 F.2d 971, 997 (D.C. Cir. 1975).

[4] The applicant cites Farmers Union Central Exchange v. FERC, 584 F. 2d 408 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 995 (1978) in support of its arguments, noting the court's caution against importing public utility notions into oil pipeline regulation. However, the DOE Act permits the Commission discretion to develop rules of practice for the oil pipeline industry, which was placed under its jurisdiction in 1977. This reorganization and revision of the Rules of Practice is pursuant to this grant of discretion, and is not inconsistent with *Farmers Union* because the final rule, by itself, does not address substantive aspects of oil pipeline regulation. *See* Rule 101(a)(2) and (b)(3), 18 CFR 101(a)(2), (b)(3).

[5] AOPL's objection that the Commission's rule on separation of functions (Rule 2202) is not applicable to the Oil Pipeline Board (OPB) has not provided any basis for a change in the final rule. AOPL has not shown how inapplicability of Rule 2202 has any bearing on the OPB's independent judgment in carrying out the authority delegated to it. *See also* 18 CFR 3c.6(i)(2). Therefore, new Rule 2202, which restates 18 CFR 1.30(f) with only minor technical changes, will continue as promulgated. Any need to address the issue of the OPB's independent judgment will be examined, as necessary, if the Commission considers whether to promulgate special OPB rules.

[6] Section 705(a) of the DOE Act, 42 U.S.C. 7295(a), provides that the ICC rules and regulations in effect on October 1, 1977, are to be applied by the Commission in oil pipeline matters until modified by the Commission.

[7] *See* 47 FR 19016 (May 3, 1982) (discussing new Rule 101(b)). This also applies to any ICC rules in 49 CFR Chapter X that have not been replaced by this rule or by other Commission rule or order. *See* 18 CFR 101(a)(2), (b)(3).

[8] ICC Rule 11, 49 CFR 1100.11, and Appendix A to 49 CFR Part 1100.

[9] Phillips, another rehearing applicant, also objects to Rule 2102 as being overly broad and vague.

from hearings for contumacious conduct. While the Commission, in this final rule, has not revised the standards of conduct which it expects from practitioners,[10] the proposed retention of a separate standard applicable solely to oil pipeline cases is impractical. The Commission foresees no difficulty in continuing to apply Rule 2102 on a case-by-case basis, using case law and ABA rules as necessary for additional guidance.[11] The Commission may also refer questionable conduct to bar associations or other professional organizations for their appropriate disciplinary action.

B. Request for Oil Pipeline Board Rules

AOPL also maintains that, in light of the unique nature of the Oil Pipeline Board's (OPB's) responsibility and AOPL's earlier requests, the Commission should have promulgated special rules for OPB proceedings. AOPL believes that the "flood" of backlogged cases and unapproved rate filings would be best handled by putting such special rules in effect at this time.

As mentioned in the final rule, the Commission declines to establish special rules for OPB proceedings at this time. The Commission is concerned that the time and inevitable controversy which will surround the enactment of OPB rules should not postpone the adoption of this final rule. It is unlikely that promulgation of OPB rules will be as speedy and non-controversial as AOPL suggests, given the number of affected parties. The promulgation of such special rules is, therefore, inappropriate as part of this limited reorganization and revision of the Commission's rules, and is best left for future action.

C. Appeals of Staff Decisions

Southern Union challenges the Commission's decision to retain and renumber, as Rule 1902, the regulations governing appeals from actions delegated to the staff.[12] In light of section 10(c) of the Administrative Procedure Act (APA),[13] Southern Union objects to the two-step process implicit in Rule 1902—an appeal to the Commission of a delegated action followed by rehearing of the Commission's decision on appeal—being necessary before seeking judicial review.

The final rule renumbers 18 CFR 1.7(d) as Rule 1902, but does not make any substantive changes pertinent to the issue raised by Southern Union. For this reason, Southern Union's objection is beyond the scope of this rulemaking. The Commission nevertheless observes that the judicial review provisions of the Commission's jurisdictional statutes, *e.g.*, section 19(a) of the Natural Gas Act, section 506(a) of the Natural Gas Policy Act, and section 313(a) of the Federal Power Act, mandate certain prerequisite actions before any order of the Commission is subject to judicial review.[14] The courts have indicated that the Commission has a degree of latitude under these judicial review provisions.[15] Existing § 1.7(d) and new Rule 1902 simply provide a mechanism by which one can exhaust administrative remedies to be able to resort to judicial review of final Commission action under the pertinent statutory provisions.[16] Because the procedures in question are grounded upon the Commission's jurisdictional statutes and because Rule 1902 essentially carries forward the existing provisions of 18 CFR 1.7(d) at issue here, modification of Rule 1902 is not considered appropriate at this time.

D. Other Issues Raised on Rehearing

For the most part, the arguments raised on rehearing present issues previously considered during the development and promulgation of the final rule in Docket No. RM78–22–000. As a result, the Commission believes that it has sufficiently addressed these matters in the final rule.[17] A few points made by the rehearing applicants, however, merit further discussion or clarification.

AOPL claims that the existence of the current waiver provision, Rule 101, will lead to uncertainty as to the regulations that will ultimately be applied. The Commission, as it explained in the final rule, believes that flexibility is necessary in order to prevent arbitrary or unfair treatment in any particular case. The "good cause" standard included in Rule 101, along with the caveat that any waiver is only "to the extent permitted by law," provide sufficient standards for a reasonable application of this rule.

AOPL objects to the imposition of Rule 203 (content of pleadings and tariff or rate filings) on oil pipelines companies. AOPL asserts that the transformation of "single printed rate sheets to full-blown pleadings" would be inconsistent with substantive ICC tariff rules in 49 CFR Part 1300, would unnecessarily convert every tariff filing into an adversary proceeding, and would cause confusion in the drafting of tariff filings. The Commission does not find it necessary to change the applicability or scope of Rule 203, in light of AOPL's arguments, for several reasons.

First, new Part 385 containing the Commission's revised Rule of Practice and Procedure replaces only the ICC rules of practice in 49 CFR Part 1100 (except for modified procedures and *ex parte* rules). Substantive ICC rules in other parts of 49 CFR Chapter X are not replaced by this final rule. *See* Rule 101(a)(2), 18 CFR 385.101(a)(2). To the extent there is an inconsistency between Rule 203 and ICC rules in 49 CFR Part 1300, Rule 101(b)(3) makes it clear that the ICC rules govern to the extent of the inconsistency. Second, Rule 203(a) indicates that tariffs must include various specified elements "as appropriate." This phrase provides oil pipeline companies with the flexibility necessary to meet the requirements of Rule 203 without, as AOPL fears, having to present the "pipeline's case-in-chief" or having to "speculate in advance about what, if any, challenge might be leveled by a protestant or the Staff." Finally, the Commission believes that it is administratively desirable to collect the requirements for pleadings and tariff

[10] *See generally*, Texas Sea Rim Pipeline Inc., Docket No. IN80–10, 17 FERC ¶ 61,302 (Dec. 30, 1981).

[11] *See, e.g.*, Louisiana Power & Light Co., Docket Nos. ER81–457–000 and EL81–13–000, 16 FERC ¶ 61,250 (Sept. 29, 1981); *see also*, Rule 2101(c) (requiring, among other things, that persons appearing before the Commission must conform to ethical standards required by the United States courts).

[12] As relates to Southern Union's objections, Rule 1902 is unchanged from its predecessor, 18 CFR 1.7(d), except for minor editorial clarifications. *See* 44 FR 46449 (Aug. 8, 1979), discussing § 1.7(d).

[13] 5 U.S.C. 704. This section, in pertinent part, states: Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

[14] *See* Placid Oil Co. v. FERC, 666, F. 2d 976, 980 (5th Cir. 1982); Boston Gas Co. v. FERC, 575 F. 2d 975 (1st Cir. 1978). In addition, courts have noted the benefits that flow from the statutory rehearing requirement. *E.g.*, Ecee, Inc. v. FERC, 611 F. 2d 554, 565 (5th Cir. 1980). Levers v. Anderson, 326 U.S. 219 (1945), cited by Southern Union, is a pre-APA case which deals with a statute which created only permissive recourse to rehearing or reconsideration, unlike the mandatory rehearing provisions of the statutes under which the Commission acts.

[15] Califorina Co. v. FPC, 411 F. 2d 720 (D.C. Cir. 1969); General American Oil Co. of Texas v. FPC, 409 F. 2d 597 (5th Cir. 1969).

[16] The Commission has power to establish delegations of authority and review procedures as an aid to orderly decisionmaking. *E.g.*, FCC v. Schreiber, 381 U.S. 279, 290 (1965); FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 143 (1940).

[17] As noted in the final rule, the Commission concurs in the recommendations and views expressed in the staff summary and analysis of the comments, relied upon in formulating the final rule and preamble, to the extent that analysis is not inconsistent with the procedures adopted. 47 FR 19015, note 4 (May 3, 1982).

or rate filings in one place, and that Rule 203, as it now stands, imposes only reasonable requirements for such pleadings and filings.

With respect to Rules 208 and 211, the Commission is urged by AOPL to require more specificity in a protest when filed, and is asked to permit replies to protests. As pointed out in the final rule, the protest is a vehicle for alerting the Commission to a potential problem and a need for action, such as setting the matter for hearing or beginning an investigation or other inquiry. A protest is not made part of the evidentiary record when a hearing is held. To enter its objections as part of the record, a party must intervene and raise those objections under other applicable procedures. Thus, the protest provisions are designed to assist inexperienced parties, small businesses, and those that cannot afford service costs, such as by requiring service of a protest only upon the person against whom the protest is directed. In addition, permitting replies to protests would, in many cases, make it administratively infeasible for the Commission to act on protests within the time afforded for Commission action. For example, section 4(d) of the Natural Gas Act allows only 30 days for the Commission to suspend a rate schedule before it otherwise takes effect. Thus, requiring more specificity and permitting replies would alter the role of protests in the Commission's administrative regime and would unjustifiably increase the administrative burden on the Commission and others in a manner contrary to the objectives of this rulemaking.

In a similar vein, the prohibition of answers to protests in Rule 213 and to rehearing requests in Rule 713 is challenged by AOPL. As noted above, there is no need to have answers to protests since protests are not part of any evidentiary record. If a protest raises significant concerns, the Commission will decide whether to set the matter for a hearing. Following intervention of the protesting party in that hearing, the underlying merits may be examined and answers may be filed as to any allegations made.

Under the final rule, answers are not allowed to rehearing requests, as a matter of course, for reasons of administrative dispatch and elimination of paperwork burdens on the Commission and its staff. The continued expedition of rehearing matters remains important to the Commission. The final rule will not, therefore, be changed to permit answers to rehearing applications. Nevertheless, the Commission can, as a matter of its own discretion, permit answers to rehearing requests on a case-by-case basis.

AOPL and Phillips also object to the 15-day periods, in Rules 213 and 215, in which answers to motions and responses opposing amendments, respectively, must be filed. As with the other objections to Rule 213 mentioned above, the Commission is concerned with administrative expedition of trial-type hearings and with elimination of unnecessary delay. For these reasons of administrative efficiency, the Commission is retaining, in Rules 213 and 215, the 15-day periods within which a party must answer motions or must oppose an amendment.

Phillips requests a standard time limit to be specified for interventions under Rule 214. The need for expedition of proceedings and for administrative flexibility to address different procedural needs in the varying kinds of Commission proceedings leads the Commission to retain Rule 214 as promulgated. The current Commission practice of prescribing the intervention period in a published notice is, therefore, deemed to be sufficient and suitable.

AOPL indicates that the summary disposition provisions of Rule 217 should include the possibility of summary disposition for failure to state a claim, a standard found in Rule 12(b)(6) of the Federal Rules of Civil Procedure. The Commission believes that the language "no issue of fact material to the decision," which is now found in Rule 217, covers this situation. The Commission finds no need to resort to a formulation prescribed in the Federal Rules of Civil Procedure.

In response to AOPL's assertion that criteria are needed for consolidation or severance (Rule 503), current agency practice, as well as the particular facts of each case, should provide sufficient guidance and basis for the Administrative Law Judges to determine consolidation or severance issues in an appropriate manner. The Commission prefers to allow flexibility for the Administrative Law Judges in the individual factual setting of each case, rather than prescribing rigid criteria in a rule.

As to AOPL's objections that a 30-day passage of time should not operate as a denial of an interlocutory appeal (Rule 715), the need to dispatch non-meritorious matters quickly and the need to reduce the Commission's paperwork burden is of great significance. To require the Commission to address, in substantive detail, every interloculatory appeal filed would be to undermine the purposes and mechanisms of the revised Rules of Practice and Procedure to expedite trial-type hearings. It would also lead to unwarranted disruptions of the normal course of most proceedings.

III. Clarification and Correction of Final Rule

The Commission wishes to clarify and correct several provisions of the final rule in this docket.

First, the Commission is clarifying that a stay of any final rule or any other interlocutory relief concerning an informal rulemaking proceeding can be requested only by petition under Rule 207(a)(5). Rule 212, like its predecessor, 18 CFR 1.12, will not be applicable to informal rulemaking proceedings. While new Rule 212 does expand the scope of the existing rule on motions, 18 CFR 1.12, the Commission does not intend to extend application of Rule 212 to informal rulemakings. Rule 212 has, therefore, been corrected to indicate specifically that it does not apply to informal rulemaking proceedings.

Second, the Commission also finds it necessary to clarify Rule 217 (summary disposition) to correct an inadvertent omission. To be consistent with other Rules of Practice and Procedure, Rule 217(d)(1) (ii) and (iii) should specify that the "decisional authority" referred to in these two subparagraphs does not include the Commission. Accordingly, the phrase "other than the Commission" will be inserted after the words "decisional authority" in both subparagraphs (d)(1)(ii) and (d)(1)(iii) of Rule 217.

Third, the Commission believes it necessary to clarify, under Rule 509(b) (admissibility of evidence), how late in a proceeding a party is permitted to challenge evidentiary rulings in light of Rule 711(d), which provides that a party can waive its right to make such challenges under certain circumstances. The phrase "later in the proceeding" in Rule 509(b) is not intended to alter Rule 711 in any way. The Commission has, therefore, corrected the language in Rule 509(b) to reflect that Rule 509 is to be applied consistent with Rule 711. It should also be noted that this clarification does not affect the Commission's power to exercise its own discretion to initiate review, and request briefs, on evidentiary issues under Rule 712, regardless of any waiver under Rule 711.

The Commission also notes that, with respect to Rule 509, subparagraphs (b)(3) and (b)(4) are redundant. The Commission is, therefore, modifying Rule 509(b) by removing subparagraph

(3) entirely and by renumbering subparagraph (4) as new subparagraph (3).

IV. Conclusion

The applications for rehearing do not raise any issues or present any data or arguments which, now having been reviewed on rehearing, warrant modification of the final rule on rehearing. The Commission emphasizes that the final rule is a major step in the Commission's process of revising its rules to achieve the best possible administration of its statutory responsibilities. It is expected that some of the issues raised by the applicants for rehearing, while beyond the scope of this rulemaking, may be pertinent if the Commission decides to initiate other procedural rulemakings.

(Administrative Procedure Act, 5 U.S.C. 551–557; Department of Energy Organization Act, 42 U.S.C. 7101–7352; Exec. Order No. 12009, 3 CFR 142 (1978); Federal Power Act, 16 U.S.C. 791–828, as amended; Natural Gas Act, 15 U.S.C. 717–717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645; Interstate Commerce Act, 49 U.S.C. 1, *et seq.*)

List of Subjects

18 CFR Part 1

General definitions, Rules of construction.

18 CFR Part 385

Administrative practice and procedure.

18 CFR Part 388

Freedom of information.

In consideration of the foregoing, the Commission orders:

(A) The applications of the Association of Oil Pipelines, Phillips Petroleum Company, and Southern Union Gathering Company for rehearing and reconsideration of the final rule in Docket No. RM78–22–000 are denied; and

(B) Chapter 1 of the Title 18, Code of Federal Regulations is corrected, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

The following corrections are made to FR Doc. 82–11675 appearing on 19014–58 in the issue of May 3, 1982:

PART 385—RULES OF PRACTICE AND PROCEDURE

1. On page 19025, column three, a new paragraph (a)(3) is added to § 385.212 to read as follows:

§ 385.212 Motions (Rule 212).

(a) *General Rule.* A motion may be filed:

* * * * *

(3) In any proceeding except an informal rulemaking proceeding.

2. On page 19027, column three, subparagraphs (ii) and (iii) of § 385.217(d)(1) are corrected to read as follows:

§ 385.217 Summary disposition (Rule 217).

* * * * *

(d) *Disposition.* (1)(i) * * *

(ii) Except as provided under paragraph (d)(1)(iii) of this section, a decisional authority, other than the Commission, which summarily disposes of part of a proceeding may:

(A) * * *

(B) * * *

(iii) If the decisional authority, other than the Commission, summarily disposes of part of a proceeding and such disposition requires the filing of new tariff or rate schedule sheets, the decisional authority will issue an initial decision on that part of the proceeding.

* * * * *

3. On page 19029, column two, paragraph (b)(3) of § 385.509 is removed, and paragraph (b)(4) of § 385.509 is redesignated as paragraph (b)(3) and is revised to read as follows:

§ 385.509 Admissibility of evidence (Rule 509).

* * * * *

(b) * * *

(3) The presiding officer will not permit formal exceptions to any ruling on evidence. This prohibition against formal exceptions does not preclude a participant from raising, as an issue, the validity of any ruling on evidence later in the proceeding, consistent with Rule 711.

[FR Doc. 82–22510 Filed 8–17–82; 8:45 am]

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18 CFR Parts 1, 1b, 2, 3, 3a, 3c, 4, 12, 16, 25, 32, 33, 34, 35, 41, 45, 131, 152, 153, 154, 156, 157, 158, 250, 270, 271, 275, 281, 282, 284, 286, 292, 375, 385, and 388

[Docket Nos. RM78–22–000 and RM78–22–010; Order No. 225–B]

Revision of Rules of Practice and Procedure to Expedite Trial-Type Hearings

Issued: August 12, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying petition for procedural rulings.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order denying the petition of the Association of Oil Pipelines for procedural rulings with respect to the final rule that reorganizes, revises in part, and update the Rules of Practice and Procedure in order to expedite trial-type hearings at the Commission. The Commission, in its order, retains the current effective date of the final rule, August 26, 1982, and waives, to the extent of their applicability, certain ICC rules that may have imposed an automatic stay of the effectiveness of the final rule as relates to the petitioner and oil pipeline companies subject to the Commission's jurisdiction.

FOR FURTHER INFORMATION CONTACT: Fredric D. Chanania, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426; (202) 357–8033.

SUPPLEMENTARY INFORMATION: On July 12, 1982, the Association of Oil Pipelines (AOPL) filed with the Federal Energy Regulatory Commission (Commission) a Petition for Procedural Rulings with Respect to Order No. 225. Order No. 225 is the final rule amending the Commission's Rules of Practice and Procedure to expedite trial-type hearings.[1]

Petitioner AOPL is seeking two procedural rulings. First, AOPL requests a ruling that the filing of AOPL's rehearing application[2] acts as an automatic stay of the final rule's effectiveness with respect to the oil pipeline industry until thirty days after the Commission decision on AOPL's rehearing application. Second, AOPL seeks a stay of the effective date of the final rule with respect to *all* regulated entities until thirty days after the Commission issues its rehearing decision on the final rule. AOPL asserts the extraordinary action is warranted because applicable ICC regulations,[3] 49

[1] Docket No. RM78–22–000, issued April 28, 1982, 47 FR 19014 (May 3, 1982) (effective August 26, 1982).

[2] Petition of the Association of Oil Pipelines for Rehearing, Reconsideration, and Clarification, filed May 27, 1982 (Docket No. RM78–22–010).

[3] Section 402(b) of the Department of Energy Organization Act, 42 U.S.C. 7172(b), transferred to the FERC the authority and functions of the ICC for establishing rates or charges for the transportation of oil by pipeline and for establishing oil pipeline valuations. Section 705(a) of the DOE Act, 42 U.S.C. 7295(a), provides that the rules and regulations of the ICC in effect on October 1, 1977 are to be applied by the Commission in such oil pipeline matters until modified by the Commission. *See* Order No. 1, Docket No. RM78–1, issued October 6, 1977, 42 FR 55450 (Oct. 17, 1977).

CFR 1100.97(c)–(g) and 1100.99, mandate an automatic 30-day stay of the Commission's decision on AOPL's rehearing application, but not of its decision on two other rehearing applications.[4] AOPL claims that, without the procedural rulings, "a staggering number of procedural anomalies could occur."[5]

The Commission agrees that the public interest and the interests of all persons concerned, including electric utility, natural gas, and oil pipeline companies, are best served by having a single effective date for all entities to which the final rule applies. The Commission, however, disagrees with AOPL that the current effective date of August 26, 1982 should be extended.

First, § 1100.97(c)–(g) of the ICC rules does not appear to stay automatically the effectiveness of the final rule for oil pipeline companies subject to the Commission's jurisdiction. The provisions of § 1100.97 (c) and (g) appear to apply only if the Commission reverses, changes, or modifies Order No. 225 in response to AOPL's rehearing application. Second, under Rule 101 of the Commission's revised Rules of Practice, the ICC rules of practice (except for modified procedures and *ex parte* rules), including §§ 1100.97 and 1100.99, cease to be effective on August 26, 1982. However, to the extent there remains any question as to when the oil pipeline industry becomes subject to the new Rules of Practice and Procedure or when AOPL may seek judicial review of the final rule, the Commission is also, in this Order, waiving the applicability of §§ 1100.97(c)–(g) and 1100.99 under the authority in 49 CFR 1100.1 (1977). It is, therefore, unnecessary to address, in any further detail, AOPL's assertions as to the Commission's underlying statutory authority [6] and the operation of 49 CFR 1100.97(c)–(g).

The Commission orders:

(1) That, with respect to the rehearing decision of the final rule in Docket Nos. RM78–22–000 and RM78–22–010, the applicability of 49 CFR 1100.97(c)–(g) and 1100.99 is waived as to AOPL and oil pipeline companies under the Commission's jurisdiction, pursuant to 49 CFR 1100.1 (1977); and

(2) That the Petition of the Association of Oil Pipelines for Procedural Rulings with Respect to Order No. 225 is hereby denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–22595 Filed 8–17–82; 8:45 am]

BILLING CODE 6717–01–M

[4] The two other rehearing applications were filed by Phillips Petroleum Company (Docket No. RM78–22–011) and by Southern Union Gathering Company (Docket No. RM78–22–012).

[5] AOPL Petition for Procedural Rulings, at 3–5.

[6] *See* section 402(h) of the DOE Act, 42 U.S.C. 7172(h), which provides the Commission with authority to promulgate the final rule in Docket No. RM78–22–000.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 204, 213, 220, 221, 222, 226, 227, 233, 234, 235, 237, and 240

[Docket No. R–82–952]

Single Family Waiver Authority

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations provides the Department with discretionary authority in individual cases to waive provisions of the single family housing regulations governing eligibility for mortgage insurance and assistance payments which are not required by law. The purpose of the change is to provide the Department with the necessary flexibility to meet the objectives of the National Housing Act.

EFFECTIVE DATE: October 6, 1982.

FOR FURTHER INFORMATION CONTACT: John J. Coonts, Director, Single Family Development Division, Department of Housing and Urban Development, Room 9270, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755–6720. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department from time to time receives single family housing proposals which meet the objectives of the National Housing Act and would provide much needed housing but which conflict with specific provisions of the regulations governing eligibility for mortgage insurance. Since the Department's single family regulations, with the exception of those governing the Section 235 program, do not provide for the issuance of waivers, many such proposals have been rejected notwithstanding that the provisions of the regulations covering such conflicts are not required by statute.

"It is well established that an agency's authority to proceed in a complex area * * * by means of rules of general application entails a concomitant authority to provide exemption procedures in order to allow for special circumstances." *U.S. v. Allegheny-Ludlum Steel Corp.*, 406 U.S. 742, 755 (1972). "[A]n application for waiver has an appropriate place in the discharge by an administrative agency of its assigned responsibilities. The agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application based on special circumstances." *WAIT Radio v. FCC*, 418 F 2d 1153, 1157 (D.C. Cir. 1969).

The foregoing principles are exemplified by the presence of more that 20 waiver or exemption provisions in the Department's regulations (see, e.g., 24 CFR 242.88 (hospital mortgage insurance), 290.7 (management and disposition of HUD-owned properties), 510.104 (Section 312 rehabilitation loans), 570.4 Community Development Block Grants), 899.101 (low-income housing)). At a time of volatile market conditions resulting in unmet housing needs, the necessity and desirability of such safety valve procedures applicable to the programs under the National Housing Act become more apparent. During 1980, a waiver provision applicable solely to the lower-income homeownership program under section 235 was adopted (24 CFR 235.3, published at 45 FR 53806 (August 13, 1980)).

On April 6, 1982, HUD published in the **Federal Register** (at 47 FR 14713) a proposed rule that would adopt separate waiver provisions applicable to the eligibility requirements and assistance payments under each of the Department's single-family mortgage insurance programs. In addition, § 235.3 would be changed to be consistent with these provisions.

HUD received one comment on the proposal, from a nationwide trade association, and the comment was in support of the proposal. Accordingly, HUD is adopting the amendment to provide this waiver procedure without change from the proposal.

In adopting this final rule, HUD intends that the new waiver procedure be available in individual cases to prevent undue hardship to homebuyers resulting from new or changed market conditions; to test the feasibility of an innovative financing proposal; or to solve a unique housing problem. The waiver would be granted only if the Secretary finds that application of a provision of the regulations not required by statute would adversely affect achievement of the purposes of the

National Housing Act. The waiver authority can be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but cannot be redelegated.

HUD emphasizes that its waiver authority is not intended to be utilized for "end runs" around the rulemaking process. Waivers will be considered only in special circumstances and will be granted only in limited cases. Where apparent needs arise for modification of regulatory requirements on a more general basis, the Department will proceed by amendment to the regulations.

This regulation applies to the following subparts: Part 203, Subpart A (except §§ 203.1 to 203.9); Part 204, Subpart A; Part 213, Subpart C; Part 220, Subpart A; Part 221, Subpart A; Part 222, Subpart A; Part 226, Subpart A; Part 227, Subpart C; Part 233, Subparts A and C; Part 234, Subpart A; Part 235, Subparts A and C; Part 237, Subparts A and C; and Part 240, Subpart A. The authority to waive is limited to those subparts which govern eligibility for mortgage insurance and housing assistance for single family programs.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

Pursuant to the provisions of 5 U.S.C. 605 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published August 17, 1981 (46 FR 41708) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The following numbers identify the programs as listed in the Catalog of Federal Domestic Assistance, affected by these regulation changes:

Section 203(k)—14.108 Rehabilitation Mortgage Insurance
Section 2203(b)—14.117 Mortgage Insurance—Homes; 14.118 Mortgage Insurance—Homes for Certified Veterans
Section 213—14.126 Mortgage Insurance—Management Type Cooperative Projects
Section 220—14.122 Mortgage Insurance—Homes in Urban Renewal Areas
Section 221(d)(2)—14.120 Mortgage Insurance—Homes for Low and Moderate Income Families
Section 222—14.166 Mortgage Insurance—Servicemen
Section 233—14.152 Experimental Housing
Section 234(c)—14.133 Mortgage Insurance—Purchase of Units in Condominiums
Section 235—14.147 Homeownership for Lower Income Families
Section 237—14.140 Special Mortgage Insurance for Low and Moderate Income Families
Section 240—14.130 Mortgage Insurance—Purchase by Homowners of the Fee Simple Title by Lessors
Section 244—14.161 Coinsurance
Section 245(a)—14.159 Section 245 Graduated Payment and 245(b)—Mortgage Program
Section 809—14.167 Mortgage Insurance—Armed Services Housing—Civilian Employees
Section 810—14.168 Armed Services Housing—Impacted Areas

List of Subjects

24 CFR Part 203

Home improvement, Loan programs—housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 204

Mortgage insurance.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 220

Home improvement, Mortgage insurance, Urban renewal, Rental housing, Loan programs—housing and community development, Projects.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 222

Condominiums, Military personnel, Mortgage insurance.

24 CFR Part 226

Government employees, Mortgage insurance, Single family housing.

24 CFR Part 227

Federally affected areas: defense housing, Military personnel, Mortgage insurance, Projects, Rental housing, Single family housing.

24 CFR Part 233

Loan programs—housing and community development, Mortgage insurance, Experimental housing, Projects.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs—housing and community development.

24 CFR Part 237

Low and moderate income housing, Mortgage insurance.

24 CFR Part 240

Mortgage insurance, Fee title purchase.

Accordingly, 24 CFR Chapter II is amended to read as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

Subpart A—Eligibility Requirements

1. A new center caption and § 203.248 are added as follows:

Waivers

§ 203.248 Waivers.

The Secretary in an individual case may waive any requirement of this subpart (except §§ 203.1 through 203.9) not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

PART 204—COINSURANCE

Subpart A—Eligibility Requirements

2. A new center caption and § 204.248 are added as follows:

Waivers

§ 204.248 Waivers.

The Secretary in any individual case may waive any requirement of this subpart not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

Subpart C—Eligibility Requirements—Individual Properties Released From Project Mortgage

3. A new center caption and § 213.748 are added as follows:

Waivers and Amendments

§ 213.748 Waivers.

The Secretary in any individual case may waive any requirement of this subpart not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

Subpart A—Eligibility Requirements—Homes

4. A new center caption and § 220.248 are added as follows:

Waivers

§ 220.248 Waivers.

The Secretary in any individual case may waive any requirement of this subpart not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Low Cost Homes

5. A new center caption and § 221.248 are added as follows:

Waivers

§ 221.248 Waivers.

The Secretary in any individual case may waive any requirement of this subpart not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

PART 222—SERVICEMEN'S MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

6. A new center caption and § 222.248 are added as follows:

Waivers

§ 222.248 Waivers.

The Secretary in any individual case may waive any requirement of this subpart not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

PART 226—ARMED SERVICES HOUSING—CIVILIAN EMPLOYEES (SEC. 809)

Subpart A—Eligibility Requirements

7. A new center caption and § 226.248 are added as follows:

Waivers

§ 226.248 Waivers.

The Secretary in any individual case may waive any requirement of this subpart not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

PART 227—ARMED SERVICES HOUSING—IMPACTED AREAS (SEC. 810)

Subpart C—Eligibility Requirements—Individual Mortgages

8. A new center caption and § 227.748 are added as follows:

Waivers

§ 227.748 Waivers.

The Secretary in any individual case may waive any requirement of this subpart not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

PART 233—EXPERIMENTAL HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Homes

9. A new center caption and § 233.248 are added as follows:

Waivers

§ 233.248 Waivers.

The Secretary in any individual case may waive any requirement of Subparts A and C of this part not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing

Commissioner, but shall not be redelegated.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Individually Owned Units

10. A new center caption and § 234.248 are added as follows:

Waivers and Amendment

§ 234.248 Waivers.

The Secretary in any individual case may waive any requirements of this subpart not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

Subpart A—Eligibility Requirements—Homes for Lower Income Families

11. § 235.3 is revised to read as follows:

§ 235.3 Waivers.

The Secretary in any individual case may waive any requirement of Subparts A and C of this part not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

PART 237—SPECIAL MORTGAGE INSURANCE FOR LOW AND MODERATE INCOME FAMILIES

Subpart A—Eligibility Requirements

12. A new center caption and § 237.248 are added as follows:

Waivers

§ 237.248 Waivers.

The Secretary in any individual case may waive any requirement of Subparts A and C of this part not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

PART 240—MORTGAGE INSURANCE ON LOANS FOR FEE TITLE PURCHASE

Subpart A—Eligibility Requirements

13. A new center caption and § 240.248 are added as follows:

Waivers

§ 240.248 Waivers.

The Secretary in any individual case may waive any requirement of this subpart not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing—Federal Housing Commissioner, but shall not be redelegated.

(Sec. 211 of the National Housing Act (12 U.S.C. 1715b))

Dated: August 11, 1982.

Philip Abrams,

General Deputy Assistant Secretary-Deputy Federal Housing Commissioner.

[FR Doc. 82-22517 Filed 8-17-82; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Office of Revenue Sharing

31 CFR Part 51

Definition of Indian Tribe Population

AGENCY: Office of Revenue Sharing, Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends § 51.32 of the revenue sharing regulations (46 FR 48034) entitled "Population" to conform the definition of the population of Indian tribes with past practice by eliminating the provision that Indians living in cities and towns on reservations or tribal trust lands are not counted towards the population of the tribe. The amendment does not apply to Indian tribes within the Oklahoma historic areas.

EFFECTIVE DATE: September 17, 1982.

FOR FURTHER INFORMATION CONTACT: Richard S. Isen, Chief Counsel, or Jacqueline L. Jackson, Attorney, Office of Chief Counsel for Revenue Sharing, Washington, D.C. 20226, Telephone (202) 634-5182.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1981, the Office of Revenue Sharing (ORS) issued regulations (46 FR 48034) which contained a new § 51.32 "Population." Subsection (d) of this section defined Indian tribe population, in pertinent part, as follows:

(d) *Population of Indian tribes and Alaskan native villages.* (1) The population of an Indian tribe or Alaskan native village is the resident population as of April, 1980, defined as—

(i) For Indian tribes, American Indians living on a reservation *minus those in cities and towns,* plus the number of American Indians living in Census Enumeration Districts (ED's) containing adjacent tribally owned trust lands of that tribe. Resident non-Indian members of families with an American Indian householder or spouse are also included in the population data (Emphasis added).

The Bureau of Indian Affairs provided the ORS with population data for Indian tribes for Entitlement Periods 1 through 11 (January 1, 1972–September 30, 1980). The practice of the Bureau was to count all Indians living within the geographic boundaries of the reservation. Beginning with the final allocation for Entitlement Period 12, the Bureau of the Census began providing population data to the ORS. At that time, the ORS assumed that all Indians living in cities and towns, whether on the reservation or not, had previously been and were counted towards the population of the city or town only. The Bureau of the Census was instructed to count Indians in that manner. The regulation was intended to reflect preexisting policy based upon the assumption that a city or town within a reservation was independent of the tribal government of the reservation with respect to Indians living within the local government's boundary.

The ORS has subsequently determined that except in the State of Oklahoma, there is little, if any,

distinction between an Indian tribe's legal relationship to its members living in cities on the reservation and those living elsewhere on the reservation. Generally, the tribes continue to provide services to the members within the reservation boundaries regardless of where they reside. Accordingly, the practice of the Bureau of Indian Affairs was correct in counting Indians living in cities and towns located on reservations towards the population of the tribe. A proposed regulation was therefore issued in the **Federal Register** on June 9, 1982 (47 FR 25029) to reestablish the policy of including Indians living in cities and towns on reservations in the population of those tribes, as well as in the population of the cities or towns on those reservations.

This rule will not apply to Indian tribes located within the historic areas of the State of Oklahoma, with the exception of the Osage Tribal Council because those tribes do not provide a substantial amount of governmental services to Indians in cities within the boundaries of historic reservation areas in Oklahoma.

Four comments were received on the proposed regulation. All were favorable to the position taken by the Director and merely confirmed the fact that Indian tribes generally provide substantial services to Indian residents of cities and towns located within reservations and should have those individuals counted towards their population.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, hereinafter referred to as the RFA) requires that regulations with significant economic impact on a substantial number of "small entities" should undergo regulatory flexibility analyses. With respect to the General Revenue Sharing Program, small entities are defined as recipient governments with a population below 50,000.

This final regulation makes a technical change to the existing regulations which affects only a small number of recipients of revenue sharing funds. Further, the final regulation imposes no additional paperwork, reporting or compliance burden on recipients. The final rule is primarily interpretative, providing needed guidance to revenue sharing recipients. The final regulation is therefore not expected to have a significant economic impact on small governmental units. Accordingly, the provisions of the RFA are not applicable to this regulatory project, and an initial regulatory flexibility analysis is not required.

Executive Order 12291—"Federal Regulation"

The final regulation does not constitute a "major rule" within the meaning of Section 1(b) of Executive Order 12291, entitled "Federal Regulation." A regulatory analysis is therefore not required.

List of Subjects in 31 CFR Part 51

Accounting, Administrative practice and procedure, Civil rights, Handicapped, Aged, Indians, Revenue sharing, and Reporting and record keeping requirements.

Authority

This final rule is issued under the authority of the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92–512) as amended by the State and Local Fiscal Assistance Amendments of 1976 (Pub. L. 94–488), and the State and Local Fiscal Assistance Act Amendments of 1980 (Pub. L. 96–604) and Treasury Department Order No. 244, dated January 26, 1973 (38 FR 3342) as amended by Treasury Department Order No. 242 (Revision No. 1) dated May 17, 1977.

Dated: July 21, 1982.

Michael F. Hill,

Director, Office of Revenue Sharing.

PART 51—FINANCIAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

31 CFR Part 51, § 51.32(d)(1)(i) is therefore revised to read as follows:

§ 51.32 Population.

* * * * *

(d) *Population of Indian tribes and Alaskan native villages.* (1) the population of an Indian tribe or Alaskan native village is the resident population as of April 1, 1980, defined as—

(i) For Indian tribes, American Indians living on a reservation plus the number of American Indians living in adjacent tribally owned trust lands of the tribe. The adjacent tribal trust lands may not conform exactly to their actual boundaries, since the boundaries used extend to the nearest physical or natural feature bordering the trust lands. Resident non-Indian members of families with an American Indian householder or spouse are also included in the population data.

* * * * *

[FR Doc. 82–22467 Filed 8–17–82; 8:45 am]

BILLING CODE 4810–26–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 179

[DOD Directive 4151.1]

Use of Contractor and DOD Resources for Maintenance of Materiel

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: This part is being reissued to update DOD policies and responsibilities concerning the use of contractor and DOD resources for DOD weapon system, equipment, and component maintenance. The DOD policy in peacetime is to keep in-house capability and capacity for depot support of mission-essential equipment to the minimum required to ensure a ready, controlled source of technical competence and resources necessary to meet military contingencies. Previous guidance on this matter was that, normally, organic depot maintenance capacity would be planned to accomplish no more than 70 percent of the gross mission-essential depot maintenance requirement. This reissuance gives preference to use of an approved "decision-tree" for sizing the minimum organic depot capacity and for making the source of repair decision instead of the 70 percent/30 percent ratio.

EFFECTIVE DATE: This part was approved and signed by the Deputy Secretary of Defense on July 15, 1982, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT: Robert T. Mason, Office of the Deputy Assistant Secretary of Defense (Logistics and Materiel Management), the Pentagon, Room 3B915, Washington, D.C. 20301, telephone 202–695–0338.

SUPPLEMENTARY INFORMATION: In FR Doc. 71–12687, appearing in the **Federal Register** on August 31, 1971 (36 FR 17417), the Office of the Secretary of Defense (OSD) published this part and has now revised it, incorporating the changes described in the **SUMMARY** above.

List of Subjects in 32 CFR Part 179

Armed forces, Contract maintenance, Engineering and technical services, Depot maintenance, Government procurement, Peacetime readiness and mobilization, Weapon systems.

Accordingly, Chapter I, 32 CFR 179 is revised to read as follows:

PART 179—USE OF CONTRACTOR AND DOD RESOURCES FOR MAINTENANCE OF MATERIEL

Sec.

Authority.—5 U.S.C. 301.

§ 179.1 Reissuance and purpose.

This part is reissued to update policies and responsibilities concerning the use of contractor and DOD resources for DOD materiel maintenance, consistent with DOD Directive 4151.16, "DOD Equipment Maintenance Program," August 30, 1972, Parts 168 and 169 of this title, and DOD Directive 4000.19, "Interservice, Interdepartmental, and Interagency Support," October 14, 1980.

§ 179.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DOD Components"). The term "Military Service," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

(b) This part will not be applied when to do so would be contrary to law or would be inconsistent with the terms of any treaty or international agreement.

§ 179.3 Definitions.

(a) *Commercial Activity Expansion.* The modernization, replacement, upgrade, or enlargement of a DOD CA that involves adding a capital investment of $100,000 or more, or increasing the annual operating costs by $200,000 or more, provided the increase exceeds 20 percent of the total investment or annual operating cost. A consolidation of two or more activities is not an expansion unless the total capital investment or annual operating cost exceeds the total from the individual activities by the amount of the threshold.

(b) *"Decision Tree".* A mobilization and combat support base decision methodology that is applied and used by the DOD Components as the basis for determining (1) the minimum resources (facilities, plant equipment, and skilled labor) required in support of the mobilization scenario and (2) the organic capabilities and physical capacities to be established and retained as a DOD Component's miminum organic peacetime base.

(c) *Depot Maintenance Activity.* An industrial-type facility established to perform depot-level maintenance on weapon systems, equipment, and components. The term includes DOD installations and commercial contractors.

(d) *Direct Combat Support.* Work that is essential to the direct support of combat operations, that is, work that if not performed could cause immediate impairment of combat capability.

(e) *Direct Maintenance Support.* Maintenance performed to materiel while it remains under the custody of the using military command.

(f) *DOD Commercial Activity.* An activity operated and managed by a DOD Component that provides a product or service obtainable from a private, commercial source. A DOD CA can be identified with an organization or type of work, but shall be separable from other functions so as to be suitable for performance either in-house or by contract, and shall be a regularly needed activity of an operational nature, not a one-time activity of short duration associated with support of a particular project.

(g) *Engineering and Technical Services.* Advice, instruction, and training in the installation, operation, and maintenance of weapon systems, equipment, and components used by DOD Components. These services are provided by qualified DOD military and civilian personnel, or by employees of defense contractors.

(h) *Indirect Maintenance Support.* Maintenance performed on materiel after its withdrawal from the custody of the using military command.

(i) *Interservice Maintenance Support.* Maintenance either recurring or nonrecurring, performed by the organic capability of one Military Service or element thereof in support of another Military Service or element thereof.

(j) *Maintenance Capability.* Availability of resources, such as facilities, skills, tools, test equipment, drawings, technical publications, training, maintenance personnel, engineering support, and spare parts, that are required to perform maintenance.

(k) *Maintenance Support.* Functions that are not a part of depot, intermediate, or organizational maintenance, but that facilitate and perpetuate any or all of those levels of maintenance. Categories include programing and planning support, maintenance technical and engineering support, technical and engineering data, and technical and administrative training.

(l) *Major End Item.* A final combination of assemblies, components, parts, and materials that performs a major, complete operational function and is ready for its intended use.

(m) *Mission-essential Materiel.* That Military Service-designated materiel authorized to combat, combat support, combat service support, and combat readiness training forces and activities, including reserve and National Guard activities, that is required to support approved emergency or war plans, and that is used to destroy the enemy or his capacity to continue war; provide battlefield protection of personnel; communicate under war conditions; detect, locate, or maintain surveillance over the enemy; provide combat transportation and support of men and materiel; and support training functions, but that is suitable for employment under emergency plans to meet purposes enumerated above.

(n) *Organic Maintenance.* That maintenance performed by a Military Service under military control using government-owned or controlled facilities, tools, test equipment, spares, repair parts, and military or civilian personnel.

(o) *Physical Capacity.* A quantitative measure of maintenance capability usually expressed as the amount of direct labor work hours that can be applied within a specific industrial shop, or other entity, during a 40-hour week (one shift—5 days).

(p) *Weapon System.* A final combination of subsystems, components, parts, and materials of an entity used in combat, either offensively or defensively, to destroy, injure, defeat, or threaten the enemy. Examples are the F–4 aircraft, FBM submarine, frigate, HAWK missile, and AH–1 Cobra helicopter.

(q) *Workload.* Total direct actual labor hours represented by the product of quantity of items programed multiplied by the direct actual labor hours per unit.

§ 179.4 Policy.

It is DOD policy that maintenance support of DOD materiel is essential to the rapid and sustained application of military power. DOD Components shall provide an adequate program for maintenance of assigned materiel to:

(a) Provide for mobilization and surge requirements as specified in the most current Defense Guidance.

(b) Meet efficiently and effectively peacetime readiness and combat sustainability objectives.

§ 179.5 Procedures.

(a) DOD Components combat and direct combat support activities shall provide, to the maximum extent possible, direct (intermediate and organizational) maintenance support for assigned materiel. Engineering technical service activities shall comply with Part 168 of this Title. During the introduction of new weapon systems, contract maintenance shall be used for those items for which a capability does not exist and cannot be developed at minimal costs. This contract maintenance shall be used until system design, reliability and maintainability characteristics, maintenance procedures, and maintenance training requirements are stabilized. Contractor personnel shall be used throughout system operating life if there are shortages in Military Service skilled maintenance personnel and if such contractor personnel shall provide wartime support in a combat zone. (See Part 170 of this Title and DOD Directive 5000.39, "Acquisition and Management of Integrated Logistic Support for Systems and Equipment," January 17, 1980.)

(b) The source (DOD military or civilian personnel, contractors, or host nation support) of direct maintenance support for other than combat and direct combat support activities shall be based on:

(1) The need to maintain a training and rotational base for military technical personnel.

(2) The security implications involved.

(3) The timely availability of private, commercial sources or host nation support.

(4) Cost and effectiveness.

(c) Initial plans for contractor and organic support of new systems shall be established as part of the integrated logistic support planning process, prior to the item production decision. (See DOD Directive 5000.39)

(d) When applicable, use of maintenance and repair contracts for common-use items, such as office machines, materiel handling equipment, and furniture, shall be in accordance with Section 5-205 of the Defense Acquisition Regulation. DOD Components shall prescribe instructions on the calculation and use of one-time repair limits and on replacement criteria for these items. The data and method applied in determining repair limits and replacement criteria shall be reviewed periodically for currency.

(e) To the extent possible, a competitive commercial depot maintenance industrial base shall be established and, as required, shall be capable of expanding during mobilization.

(f) Indirect (depot) maintenance support of DOD materiel shall be planned and accomplished by contractual sources and organic capability. (See DOD Directive 4005.1, "DOD Industrial Preparedness Production Planning," July 29, 1972.)

(g) Normally, each DOD Component shall provide for the indirect maintenance support of DOD mission-essential materiel. Interservice maintenance support arrangements shall be established and executed wherever such actions will prove more efficient. (See DOD Directive 4000.19)

(h) Pursuant to Part 169 of this Title, prime consideration shall be given to use of contractor support for indirect maintenance when such support would:

(i) Improve the industrial base for maintenance or for equipment, spares, and parts manufacture.

(ii) Improve peacetime readiness and combat sustainability through planning for postproduction support of weapon systems and equipment.

(iii) Be cost-effective.

(iv) Enable program managers to implement contract incentives for reliability and maintainability (for example, reliability improvement warranty contracts and failure-free contracts).

(i) Organic depot maintenance capabilities and physical capacities established or retained within the DOD Components for support of DOD materiel shall be kept to the minimum required to ensure a ready, controlled source of technical competence and resources necessary to meet military contingencies.

(1) Peacetime and time-phased mobilization depot maintenance workload plans for DOD Components shall be quantified in terms of required resources consistent with DOD Directive 3005.6, "Civilian Workforce Mobilization Planning and Management," May 8, 1981 and projected annually as an integral part of the DOD Planning, Programing, and Budgeting (PPB) process. Mobilization workloads shall be based upon scenarios contained in the most current annual Defense Guidance. DOD Component depot maintenance workload plans shall address total requirements and shall be identified by work breakdown structure, customer, and fund sources supported by respective customers. Workloads shall be displayed according to monthly requirements for at least a 12-month period. Organic capabilities and physical capacities to be established and retained as a DOD Component's minimum organic peacetime base shall be determined by use of a "decision tree" for assigning source of repair responsibilities (organic, interservice, and contract) and for determining the minimum (organic) resources required in support of the mobilization scenario. The "decision tree" use shall consider mobilization depot maintenance materiel resources that must be available in the organic depot maintenance establishment at the outset of mobilization. The "decision tree" also, as a minimum, shall consider the required facilities, plant equipment, and labor (by skill) related to their planned application during the mobilization period. Each DOD Component's "decision tree" shall be approved by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (ASD(MRA&L)).

(2) The appropriate Secretary of a Military Department or Director of a Defense Agency, except as delegated in § 169.4(b)(3) of this chapter, annually shall approve the organic physical capacity and capability and the peacetime workload distribution plan. Major changes to the distribution of peacetime workloads during the program execution year also shall be approved by the appropriate Military Department Secretary or Defense Agency Director.

(3) Unless otherwise justified under paragraphs (i)(1) and (2) of this section each DOD Component's organic depot maintenance peacetime physical capacity shall be planned to accomplish no more than 70 percent of its gross mission-essential depot maintenance workload requirements. At least 30 percent of the gross mission-essential and all of the nonmission essential workload requirements shall be decided on the basis of economy, the timely availability of private, commercial sources, and the need to maintain a commercial industrial mobilization base. The 70/30 ratio will not apply to each individual weapon system and subsystem workload. However, it shall apply to homogenous commodity groupings within the gross mission essential requirement. Furthermore, consideration shall be given to contracting for the depot maintenance of an entire weapon system or subsystem when the industrial base considerations stated herein can be achieved.

(4) DOD Component facility utilization (by depot) in peacetime shall be planned to accomplish the equivalent of 100 percent of peacetime workload capacity on a 40-hour week, one-shift basis as defined in DOD Instruction 4151.15, "Depot Maintenance Programming Policies," November 22, 1976, with the

equivalent of an organic facility utilization of 185 percent physical capacity under mobilization. In sizing organic capability and physical capacity of shops susceptible to high surge, or cost intensive facilitization, consideration shall be given to limiting individual shop utilization to a maximum of 250 percent of physical capacity during mobilization. When 250 percent of physical capacity would be exceeded due to a mobilization surge, a lower shop utilization of peacetime physical capacity may be justified.

(j) A Joint Support Plan, participated in by all users, shall be developed by the lead DOD Component whenever the same weapon system or equipment is being procured for use by two or more DOD Components. Joint Support Plans also may be required selectively for jointly used major end items and components when such plans are in the best overall interest of the Department of Defense. The Joint Support Plan shall include as assessment of existing depot maintenance capabilities of the DOD Components involved and shall address basic considerations; how the proposed assignment of depot maintenance responsibilities makes maximum use of existing DOD cababilities required to satisfy mobilization demands while reducing to a minimum new investment in additional resources; and the planned distribution of depot maintenance workloads between component organic and commercial sources over the weapon system's planned life in consideration of both peacetime and mobilization demands. Proposed plans shall be submitted to the ASD(MRA&L) for approval. (See Part 352 of this title and DOD Directive 5000.39).

(k) Supplemental procedural guidance is contained in Part 169 of this title, Part 169a of this title, and DOD 4100.33–H, "DOD In-House vs Contract Commercial and Industrial Activities Cost Comparison Handbook," April 1980, which implement Office of Management and Budget (OMB) Circular No. A–76, "Policies for Acquiring Commercial or Industrial Products and Services needed by the Government," March 29, 1979, as amended.

§ 179.6 Particular considerations concerning OMB Circular No. A–76.

(a) Approval by the appropriate Secretary of a Military Department or Director of a Defense Agency, except as delegated in § 169.4(b)(13) of this chapter of the peacetime workload distribution plan cited in paragraph (i)(1) and (2) of this section, shall, for in-house depot maintenance activities, be considered as approval for in-house performance of a DOD commercial activity (CA) needed for support of national defense. Also see § 169.3(b)(1)(iv).

(b) When new maintenance work, approved as part of the minimum organic peacetime base, is being introduced, every effort shall be made to retain current employees on this new work through the use of retraining. Contracts for maintenance-related services that are shown to be justified for in-house performance in accordance with Part 169a of this title shall be terminated as quickly as in-house capability can be established. When the additional manpower spaces required cannot be accommodated within the DOD Component's personnel authorized ceiling, a request for adjustment normally shall be submitted to the Secretary of Defense in conjunction with the annual budget review process.

(c) If a particular DOD CA no longer is required as part of the minimum organic peacetime base, justification for in-house performance shall be in accordance with Part 169 of this title that is, no satisfactory private commercial source is available or in-house performance is more economical than contract.

§ 179.7 Responsibilities.

(a) The *Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)* shall monitor compliance with this part. In discharging this responsibility, the ASD (MRA&L) shall:

(1) Concurrently review departmental depot maintenance programs and the annual Program Objectives Memoranda (POMs) and budgets.

(2) Review DOD depot maintenance capabilities and physical capacities; assess alternative plans for depot maintenance support; and review and approve proposed plans for depot maintenance support of multiservice-use weapons and selected end items (See also DOD Directive 5124.1).

(3) Review each major system Integrated Logistic Support plan to determine adequacy of the maintenance concept and related plans, and recommend changes to the acquisition executive when program planning is inadequate.

(4) Make final determination on all requests for exceptions to this part.

(b) The *Head of each DOD Component* shall:

(1) Quantify in terms of appropriate resources (facilities, plant equipment, and personnel by skill), and annually submit to the OSD as a part of the PPB process, projections of peacetime and time-phased mobilization workloads for DOD weapon systems and equipment depot maintenance.

(2) Annually determine minimum organic depot maintenance capabilities and physical capacities required to ensure a ready, controlled source of technical competenace and resources necessary to meet military contingencies.

(3) Annually develop a peacetime workload distribution plan consistent with the minimum determined in paragraph (b)(2), above.

(4) Develop and present the annual depot maintenance program as a part of the PPB cycle. The program shall reflect the total Military Department or Defense Agency peacetime requirements for accomplishment by organic contract, or interservice sources, as appropriate. (See DOD Instruction 7110.1, "DOD Budget Guidance," October 30, 1980.)

(5) Ensure that efficient utilization is being realized from that organic capability retained for the depot maintenance support of materiel.

(6) Maintain the technical competence necessary to ensure efficient management of the total depot maintenance workload program.

(7) Foster the establishment and retention of a competitive commercial depot maintenance industrial base.

(8) Ensure that the same degree of management emphasis and attention is given to workloads accomplished by contract sources as that given to workloads performed by organic sources. (See Part 170 of this title.)

(9) Request that the ASD (MRA&L) approve exceptions to this Part to accommodate peculiar circumstances or other overriding factors.

(10) Determine, by the production decision milestone for each new weapon system or equipment, whether sufficient numbers of skilled Military Service personnel will be available for direct maintenance support (for all systems including combat and direct combat support). The Head of each DOD Component shall develop a plan to use contractors when an adequate number of Military Service skilled personnel are not available. (See DOD Directive 5000.39.)

(11) Develop cost-accounting systems that will provide total cost of organic maintenance support in order to:

(i) Make cost-effectiveness determinations.

(ii) Assist in life cycle cost estimation and verification.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

August 12, 1982.

[FR Doc. 82-22561 Filed 8-17-82; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-5-2106-2]

Designation of Areas for Air Quality Planning Purposes: Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: EPA today is redesignating a portion of northern Porter County, Indiana from unclassifiable to nonattainment for total suspended particulates (TSP). This is based on monitoring data showing violations of the National Ambient Air Quality Standards (NAAQS). EPA is also correcting the erroneous October 5, 1978 designation of Porter County by designating the remainder of the county as unclassifiable.

EFFECTIVE DATE: This final rulemaking becomes effective on September 17, 1982.

ADDRESSES: Copies of the supporting air quality data, the report of EPA's ambient monitoring study near Bethlehem Steel, Burns Harbor, Indiana and technical support documents which contain EPA's detailed review of the submittal and public comments are available at the following addresses:

Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street Chicago, Illinois 60604

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

FOR FURTHER INFORMATION CONTACT: Anne Ernstein, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION: In 1979, EPA established three TSP monitors in the vicinity of the Bethlehem Steel Burns Harbor Mill. Twelve continuous months of data were collected at two of the TSP monitors (sites A and B) and 10 months of data were collected at the other monitor (site C). All three monitors recorded violations of the TSP primary standard during this period.

Based on these data, on November 5, 1981 (46 FR 54974), EPA proposed to redesignate a portion of northern Porter County, Indiana as primary nonattainment for TSP. On November 25, 1981, Bethlehem Steel requested an extension to the public comment period. The notice extending the public comment period was published on December 9, 1981 (46 FR 60217).

During the public comment period, seventeen public comments were received. Summarized below is EPA's evaluation of all significant public comments received. Fourteen letters from citizens and environmental groups supported the nonattainment redesignation. Among other things, the commentors expressed concern about health effects, soiling of property, visibility impairment, and negative economic impact related to particulate air quality in northern Porter County.

Comment: The U.S. Department of the Interior, National Park Service, expressed support for the proposed redesignation, but suggested that the eastern and western boundaries be changed to Mineral Springs Road and Indiana 249, respectively. The commentor believed that narrowing the nonattainment area was appropriate because ambient monitors located west of EPA's proposed eastern boundary and east of EPA's proposed western boundary have recorded no violations recently.

Response: EPA agrees that the eastern boundary suggested by the commentor is appropriate and agrees that the alternative western boundary is also appropriate with one minor change. Rather than defining the western boundary as Indiana 249, as suggested by the commentor, the Agency believes that it is more appropriate to define the western boundary as Indiana 249 from Interstate 94 to Burns Ditch, and Burns Ditch, from Indiana 249, north to Lake Michigan. The area between Indiana 249 and Burn Ditch is too close to the industrialized area and to the monitors indicating violations for it to be excluded from the nonattainment area.

EPA reviewed the data collected at the monitors identified by the commentor (Dunes Acres and Ogden Dunes). No violations were recorded, but quality assured data are available only for the first and second quarters of 1981 for both sites. Therefore, until such time as more data are collected, the area excluded by this change from the boundaries as they were proposed in the Notice (Novembrer 5, 1981; 46 FR 5497) should remain unclassified.

Comment: The State of Indiana opposed the redesignation based on its belief that proper quality assurance procedures were not observed. The commentor argued that properly quality assured data must be obtained prior to redesignating Porter County. Indiana's comments included letters it previously submitted to EPA.

Response: EPA maintains that the ambient data collected during the special study are appropriate for redesignation purposes. This matter was addressed in a letter to the State, dated September 23, 1981. As noted in the letter, the State of Indiana did not have an approved quality assurance program until July 28, 1980, after the completion of EPA's monitoring study. As a result, EPA calibration and quality assurance procedures [1], which are nationally applicable and which are the quidelines recommended by the EPA's Environmental Monitoring Support Laboratory, were in effect and were employed at the time of the study. The communications between the State and EPA and EPA's technical support document provide a more detailed response to Indiana's comments.

Comment: One commentor argued that the Northern Indiana Public Service Company Bailly Generating Station should not be included in the proposed nonattainment area. According to the filter analyses, the most significant contributor to nonattainment was coal dust with an average size ranging from 15 to 45 microns. The commentor claimed that these relatively large particles have high settling velocities and, thus, could only originate from sources very close to the monitors. Therefore, the commentor claimed that the problem was highly localized and that the proposed nonattainment area is too large.

Response: EPA reviewed the filter analyses, the meteorological conditions associated with the monitored violations, and transport characteristics of the average size coal particles. This review indicated that the Bailly coal piles could have contributed to the monitored violations and no data has been submitted to refute this conclusion. Details of this analysis are contained in the technical support document for this action.

[1] Reference 2 from 40 CFR Part 58 Appendix A, which is "Quality Assurance Hanbook for Air Pollution Measurement System, Volume II—Ambient Air Specific Methods," EPA 600/4-77-027a, May 1977.

Comment: One commentor maintained that in *U.S. Steel Corp. v. USEPA*, 605 F.2d 283 (7th Cir. 1979), the Seventh Circuit held that section 107 designations are subject to the requirements of section 307(d) of the Clean Air Act (Act) which requires that a rulemaking docket must be prepared and be available for inspection. The commentor argued that because EPA has not met the statutory requirements of section 307(d), the proposed redesignation is not valid.

Response: EPA disagrees that either the *U.S. Steel Corp. v. USEPA* decision or section 307(d) requires EPA to compile a complete rulemaking docket and meet the other section 307(d) requirements when EPA proposes attainment redesignations pursuant to section 107.

The procedural requirements of section 307(d) apply only to those actions listed in section 307(d)(1). Section 107 designations are not included in this list. Furthermore, although the Seventh Circuit in *U.S. Steel Corp. v. USEPA* did state in a footnote that section 307(d) may "arguably" apply to redesignations, it did not decide this issue. The only aspect of section 307(d) that the court applied to redesignations was the limitation in Subsection (d)(9) on judicial review of procedural errors which was held applicable in all rulemakings, including redesignations.

Comment: One commentor stated that EPA does not have authority under the Act to redesignate areas unilaterally. The commentor claimed that section 107 requires that such redisignations must first be proposed to EPA by the State. The commentor argued that EPA should withdraw the proposed action because the State of Indiana had recommended that EPA not proceed with the redesignation.

Response: EPA maintains that it does have authority to initiate redesignations based on section 107(d)(2). Subsection (d) authorizes the Administrator to promulgate modifications to the list of designations submitted by the states. EPA also maintains that the statutory language indicates that the EPA has authority to modify the list provided by the State, both when the lists were first submitted and whenever else the Administrator has available data to support subsequent revisions to the designations.

Comment: A commentor argued that the data upon which the redesignation is based are invalid because: (1) The State's quality assurance requirements were not followed, and (2) EPA's monitor sites A and B were located in an area not accessible to the general public. The commentor concluded that the air monitored at these two sites was not "ambient air" as defined by EPA and was not subject to the Clean Air Actrequirements.

Response: The issue concerning the State's quality assurance requirements has already been addressed in a letter to the State, dated September 23, 1981. As noted in the letter, the State of Indiana did not have an approved quality assurance program until July 28, 1980, after the completion of EPA's monitoring study. As a result, EPA calibration and quality assurance procedures, which are nationally applicable and which are the guidelines recommended by the EPA's Environmental Monitoring Support Laboratory, were in effect and employed at the time of the study.

Further, the data collected at monitoring sites A and B are appropriate for redesignation purposes because these sites did monitor "ambient air" within the definition in 40 CFR 50.1(e). Ambient air is defined as "that portion of the atmosphere, external to buildings, to which the general public has access". This excludes land owned or controlled by the source to which public access is precluded by a fence or other physical barriers.

EPA's policy of not requiring attainment of standards on company-owned property is a limited one. It does not permit a company to cause a violation of the NAAQS in the areas which are not adjacent to and owned by the company. The two EPA sites which the commentor questioned are located not on its own property but on that of the Port of Indiana.

Comment: One commentor argued that EPA's proposed redesignation is arbitrary, given EPA's announced plans to revise the particulate matter standard so as to regulate only those size particles that "affect public health". In addition, the commentor claimed that data collected at EPA site C show attainment when certain particles (which the commentor alleged do not affect public health) are discounted.

Response: Section 109(d)(1) requires that both the ambient air quality criteria and standards are to be reviewed, and, as appropriate, revised at five-year intervals beginning not later than December 31, 1980. This review for particulate matter is currently in progress. At this time, however, the updated criteria documents which will serve as the basis for the new standards have not yet been finalized nor has a new revised standard been promulgated. The Administrator has no authority to indefinitely postpone rulemaking action on a designation change because of possible future changes in the ambient standard. Current rulemaking on redesignations must be based upon the existing particulate standard. The ambient air quality standard established to protect public health is defined in terms of total suspended particulates. Therefore, based upon the existing primary TSP standard, the data gathered from EPA site C, as well as the data from sites A and B, show nonattainment.

Comment: A commentor submitted additional monitoring data collected at various sites throughout Porter County during 1981. The data showed no primary violations at these monitoring sites. Furthermore, the commentor noted that three of the monitors are located near EPA's proposed nonattainment area. Thus, the commentor believed that the 1981 data justified EPA withdrawing its proposed redesignation.

Response: Today's redesignation is based on data collected during the 1979–1980 EPA special study. EPA maintains that these data demonstrate that the Burns Harbor area should be designated nonattainment. The 1981 data do not demonstrate that the area has attained the standards because of the location of the monitors and the length of time covered by the data.

The three Porter County monitors in the general area of the Burns Harbor Plant, referred to by the commentor, were taken into account in setting the final nonattainment boundaries. Specifically, two of the sites (Ogden Dunes and Dunes Acres) were used to refine the eastern and western edges of the nonattainment area. Data from the third site (Chesterton) were also considered but did not influence the nonattainment boundaries.

Comment: A commentor asserted that its proposed air quality study, which has been approved by the State, should be used as the basis for determining the proper designation of Porter County.

Response: There is already sufficient data on the northern portion of Porter County on which to base the nonattainment redesignation. EPA believes that redesignation is necessary to protect public health, and that delay is not warranted.

Comment: The commentor questioned the statutory basis for the various deadlines proposed by EPA—one year for submission by Indiana of its Part D

SIP plan for the nonattainment area of Porter County, 6 months for action by EPA on the plan, and 3½ years for compliance with the plan.

Response: The Clean Air Act amendments of 1977 established December 31, 1982 as the attainment date for nonattainment areas. Meeting that date, however, would create an insurmountable problem for those areas designated nonattainment within a few months of the 1982 deadline. Therefore, in July 1980, EPA issued both a memorandum and legal opinion setting forth a new policy that SIP's developed for newly designated nonattainment areas would be subject to the same Part D time intervals as were the SIPs for the areas initially designated nonattainment. This policy allows 12 months from the nonattainment designation for preparation and submittal of the plan, 6 additional months for EPA action on the plan and 3½ years from the date of approval until compliance. EPA adopted this policy so as to enable recently redesignated nonattainment areas to be subject to comparable deadlines to those established by Congress for areas which EPA designated nonattainment in 1978.

After reviewing the monitoring data and the public comments, EPA approves the following set of nonattainment boundaries for a sub-county portion of Porter County, Indiana:

North—Lake Michigan shoreline
East—Mineral Springs Road
South—Interstate 94
West—Indiana 249 from Interstate 94 to Burns Ditch, Burns Ditch from Indiana 249 to Lake Michigan

EPA today is also correcting the designation of the remainder of Porter County. As discussed in the November 5, 1981, Notice of Proposed Rulemaking, the October 5, 1978, designation erroneously designated all of Porter County as nonattainment. The correct designation for the county, exclusive of the area identified above, should be unclassifiable.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

This Notice of Final Rulemaking is issued under the authority of Section 107 of the Clean Air Act, as amended (42 U.S.C. 7407).

Dated: August 10, 1982.

John W. Hernandez, Jr.,

Acting Administrator.

§ 81.315 Indiana.

INDIANA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * *	*	*	*	*
Porter County:				
An area bounded on the north by the Lake Michigan shoreline, on the east by Mineral Springs Road, on the south by I-94, and on the West by Indiana 249 from I-94 to Burns Ditch and then following Burns Ditch to Lake Michigan	X			
The remainder of Porter County			X	
* * *	*	*	*	*

[FR Doc. 82-22352 Filed 8-17-82; 8:45 am]

BILLING CODE 6560-50-M

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Subpart C—Section 107, Attainment Status Designations

Title 40, of the Code of Federal Regulations, Chapter 1, Part 81, Subpart C, Indiana is amended as follows:

The Porter County TSP portion of § 81.315, which can be found in the Code of Federal Regulations below Marion County and above St. Joseph County, is being revised as follows:

40 CFR Part 123

[HW-9-FRL 2132-3]

Hazardous Waste Management Program; Phase I Interim Authorization

AGENCY: Environmental Protection Agency (EPA), Region IX.

ACTION: Granting of Phase I Interim Authorization to State Hazardous Waste Program.

SUMMARY: The State of Arizona has applied for Interim Authorization of its hazardous waste program under Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA) and EPA guidelines for the approval of State hazardous waste programs (40 CFR Part 123, Subpart F). EPA has reviewed Arizona's hazardous waste program and has determined that the program is substantially equivalent to the Federal program. EPA is hereby granting Phase I Interim Authorization to Arizona to operate a hazardous waste program in lieu of Phase I of the Federal hazardous waste program in its jurisdiction.

EFFECTIVE DATE: August 18, 1982.

FOR FURTHER INFORMATION CONTACT: Alexis Strauss, Toxics & Waste Management Division, U.S. EPA, Region 9, 215 Fremont Street, San Francisco, California 94105, (415) 974-8124.

SUPPLEMENTARY INFORMATION:

I. Background

Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), requires EPA to establish a comprehensive Federal program to assure the safe management of hazardous waste. Once a Federal program is established, EPA is authorized under Section 3006 of RCRA to approve State hazardous waste programs to operate in lieu of the Federal program in their jurisdictions. Two types of State program approvals are authorized under RCRA: "final authorization" is a permanent approval which may be granted to States whose programs are "equivalent" to and "consistent" with the Federal program and provide adequate enforcement; "interim authorization" is a temporary approval for States which might not meet the requirements of final authorization but whose programs are at least "substantially equivalent" to the Federal program. RCRA comtemplates that States receiving interim authorization will use the interim authorization period to make the changes in their regulations and statutes necessary to qualify for final authorization.

On May 19, 1980, EPA published the first phase of the Federal hazardous waste program (40 CFR Parts 260–263 and 265) and guidelines for authorizing State hazardous waste programs under Section 3006 (40 CFR Part 123). These

guidelines set forth the requirements for interim authorization and the procedures which EPA will follow in acting on State applications for interim authorization. They also provide that EPA will grant interim authorization in two major phases (Phase I and Phase II), corresponding to the two major phases of the Federal Program.

On November 3, 1980, the State of Arizona applied to EPA for Phase I interim authorization of its hazardous waste management program. On January 5, 1982, the State of Arizona submitted revisions to this application. Accordingly, EPA published notices of public comment periods in the Federal Register on November 7, 1980 and January 26, 1982, inviting comment on the State's application. All comments received during the first review period have been noted and considered as discussed below; there were no comments submitted during the latter review.

Since 1977, Arizona has been developing a state hazardous waste management program. Hazardous waste generator, transporter, and treatment, storage and disposal regulations were first adopted on May 2, 1980. In order to meet the requirements for interim authorization, the State issued emergency amendments to its regulations on October 23, 1980. Final amendments, addressing several concerns raised by the regulated community, were adopted on October 14, 1981. These regulations were based on various State statutory provisions, which provide the requisite legal basis for their promulgation, as certified by the State Attorney General. The State has demonstrated a continuing commitment to build and improve its hazardous waste program, and has devoted adequate resources to implement its program.

II. Adequacy of Application

The State of Arizona submitted its preliminary draft application for Phase I interim authorization on June 2, 1980, and its draft application on July 10, 1980. EPA reviewed the applications and prepared comments for the State. In our comments to the State on these draft applications, several issues were identified to assist the State in preparing its final Phase I application and meeting the interim authorization requirements.

The major issues identified in the original review were: (1) Deficiences in the State's manifest requirements; (2) whether the State's universe of hazardous waste was nearly identical to the RCRA universe; (3) uncertainty regarding the State's ability to assess the minimum civil or criminal penalties; and (4) whether the State has substantially equivalent interim status standards.

The State submitted its complete application on November 3, 1980. In its final application and subsequent clarifications and "errata sheets", Arizona addressed the concerns EPA had identified with the State's application; specifically:

1. The deficiences in the State's manifest system were resolved. The State provided in its Program Description that additional manifest information, pursuant to DOT regulations 49 CFR 172.205 adopted by the Arizona Corporation Commission, must be included in the manifest form. DOT regulations are consistent with the EPA manifest requirements specified in 40 CFR Part 262. The State confirmed in its Program Description that it would: Check all manifests to ensure that interstate shipments go only to approved facilities in other states; verify that all international shipments arrive at their destination; and contact other states and foreign governments to follow-up on shipments which may not have been properly delivered.

2. The second issue regarding the State's universe of hazardous waste was remedied by emergency regulations adopted by the State on October 23, 1980, and the subsequent final amendments of October 14, 1981. Specific issues addressed by the new regulations include: the definition of "on-site"; the toxic waste criteria and extraction procedure test; and modification of the provision for use and reuse of hazardous waste.

3. The concern regarding the State's ability to assess sufficient penalties was satisfactorily addressed in the revised application. The Attorney General's Statement demonstrated that the State's penalty provisions met the $1,000 minimum amount specified in 40 CFR 123.128(f)(1)(iii).

4. The fourth concern, regarding the State's ability to impose facility standards substantially equivalent to the Federal interim status standards, was resolved by the emergency regulatory amendments and subsequent final amendments. The Attorney General's Statement and an elaboration of the permit portion of the Program Description were included in the final application, which further clarified the State's permitting procedures. The permit-related regulations enable the State to grant facilities temporary approval to operate, with the condition that they comply with the requirements of the Federal interim status standards. The Arizona Department of Health Services has issued letters containing such approval with the applicable requirements to all persons who submitted valid Part A permit applications.

5. An additional issue that emerged as a result of new material contained in Arizona's revised application was how the assurance that the public participation requirements of 40 CFR 123.128(F)(2)(ii) would be met. The Arizona Department of Health Services agreed in the Memoradum of Understanding and the Program Description to implement these requirements.

During EPA's review of Arizona's final application, the State's emergency regulations expired and EPA suspended consideration of the application. Arizona submitted revisions to its application on January 5, 1982, based on final regulations which it adopted in October 1981. Upon receipt of the final regulations and related materials, EPA identified the need for revision of the Attorney General's Statement, which had been supplemented after the emergency regulations were adopted. As regulatory amendments were adopted subsequent to the original and supplementary opinions, some revisions were needed. The issues to be clarified were:

1. Reconciliation of the citations in the Attorney General's Statement with the new section numbers and amendments in the Arizona regulations;

2. Certification that the regulatory amendments did not alter Arizona's authority to enforce conditions substantially equivalent to 40 CFR Part 265;

3. Clarification of the State's requirements for hazardous waste incinerators and dischargers to sewage systems.

The required certifications and points of clarification were addressed in the Revision of Attorney General's Statement, dated April 9, 1982, and submitted to EPA on April 12, 1982. EPA review of all materials submitted has resulted in the satisfactory resolution of all outstanding issues.

III. Responses to Public Comments

On November 7, 1980, Region 9 published a notice in the Federal Register which indicated EPA had received a complete Phase I interim authorization application from Arizona, and announced the opportunity for comment on Arizona's application, which could be provided in writing or orally at a public hearing. All comments were due by the close of the December 11, 1980, public hearing.

On January 26, 1982, EPA announced a second public comment period and opportunity for public hearing, to review

the final regulatory amendments and other materials submitted in the State's revised application. Neither comments nor requests for a hearing were received during this period; thus, the summary of comments below is derived solely from the original review period.

The public hearing of December 11, 1980, was conducted by Region 9 in Phoenix, and was attended by approximately eighty persons. Seventeen persons made presentations at the hearing, and thirteen of these persons also submitted written comments. Five additional written comments were submitted during the public comment period. All comments were reviewed and considered in reaching the decision on Arizona's application for interim authorization.

Of the twenty-two public comments on the Arizona application for Phase I interim authorization, four persons favored granting the State Phase I interim authorization, twelve persons supported granting the State Phase I authorization subject to specific conditions, two opposed granting Phase I authorization, and four neither supported nor opposed authorization. The three common areas of concern were: the universe of hazardous waste covered by the State regulations was broader than that covered by the Federal regulations; the State regulations were more stringent than the Federal regulations; and the State regulations were too vague to be enforceable. Following is a summary of the comments and EPA responses.

1. *Comment*—Nine persons stated they supported the eventual granting of Phase I authorization, but requested EPA keep the public comment period open and delay granting interim authorization until the State made final its emergency regulations.

Response—Arizona's emergency regulations expired before EPA acted on its final application for interim authorization. Since final regulatory amendments had not been adopted when the emergency regulations expired, Arizona requested extended consideration of the authorization application by EPA until the regulatory changes were completed. EPA waited until the final amendments were adopted and another public comment period was held before making its determination.

2. *Comment*—Five persons supported the granting of Phase I interim authorization with the condition that some of the emergency regulations be amended to be more consistent with the Federal regulations in defining the universe of regulated waste. The concern expressed was that the State's universe of hazardous waste, defined by emergency regulations, resulted in a broader universe than the Federal regulations.

Response—Although EPA could not have withheld interim authorization on this basis, Arizona responded to these comments by amending its regulations to make them more consistent with the Federal regulations.

3. *Comment*—Five persons stated the State emergency regulations regarding the universe of hazardous waste and the small generator exemptions were overly stringent and created an undue burden and expense to the regulated community. They requested Arizona adopt final regulations which were less restrictive and more closely paralled the Federal regulations.

Response—A State may exercise its authority to require standards more stringent than the Federal requirements. EPA does not have the authority to limit a State from imposing more stringent standards (see 40 CFR 123.121(i)). However, Arizona chose to revise its regulations in response to these comments so they more closely parallel the Federal regulations.

4. *Comment*—Seven persons objected to the language of certain State regulations being overly broad. For example, the State's use of the "irreversible illness" criterion to identify hazardous wastes was criticized for lack of specificity to determine whether wastes in fact met the State definition.

Response—Federal regulations (40 CFR 261.10) delineating the criteria to identify the characteristics of hazardous waste incorporate the "irreversible illness" test. The State now parallels the Federal regulations and consequently, the regulated community will be subject to this particular test under either the Federal or State hazardous waste program. The Arizona Attorney General has certified the validity of the State regulations.

5. *Comment*—Two persons stated Arizona's hazardous waste program was substantially equivalent to the Federal program under RCRA and the regulations published in 40 CFR Part 123, Subpart F, and that EPA should grant the State Phase I interim authorization.

Response—EPA agrees with this assessment.

6. *Comment*—Three commenters expressed concerns about the Arizona Department of Health Services' capability to adequately manage the State's hazardous waste program, and suggested that Phase I interim authorization be withheld until these concerns were addressed. One comment specifically concerned the State's ability to develop a workable set of regulations, given the vacancies which existed in top administrative positions. Another comment criticized the Department's performance in other program areas and urged that another agency in Arizona be designated the lead agency for administering the hazardous waste program. A third comment concerned the Department of Health Services' potential conflict of interest, since it is responsible for both hazardous waste siting and enforcement of the hazardous waste program.

Response—The Arizona Department of Health Services responded to these concerns by adopting its hazardous waste regulations, and filling the key managerial positions in the Department. Regarding the lead agency designation, EPA's only requirement is that the agency administering the program must have state-wide jurisdiction; it is the Governor's prerogative to determine which State agency is most appropriate. Finally, regarding potential conflict of interest issues, the State hazardous waste site to be developed will require a RCRA permit. The facility is planned to be operated by a private entity, and will be responsible to the Department of Health Services for compliance with permit conditions. This is comparable to other hazardous waste facilities in other States.

7. *Comment*—Two commenters expressed a preference for EPA to retain control of the hazardous waste management program in Arizona, as Federal implementation of the hazardous waste program would ensure greater uniformity throughout the 50 States, and, in the commenters' view, firmer but fairer enforcement.

Response—EPA has determined that Arizona's program meets the requirements for Phase I interim authorization. EPA has no discretion to deny Phase I authorization to a State that meets the requirements of 40 CFR Part 123, Subpart F.

8. *Comment*—One person stated the Federal hazardous waste regulations were promulgated under clear statutory authority, while the State regulations do not enjoy a similar posture. He alleged that the statutes cited and relied upon by the Arizona Department of Health Services were never intended to grant the type or breadth of authority necessary for the promulgation of the hazardous waste regulations.

Response—The Federal regulations (40 CFR 123.125) require a State seeking to administer its hazardous waste program in lieu of the Federal program to submit a statement from the Attorney General that the State laws and regulations provide adequate authority

to operate the program as outlined in the Program Description. The Attorney General's Statement includes citations to specific State statutes and regulations which he has certified are adequate authority for Arizona's hazardous waste program.

IV. Decision

Region 9 has worked closely with the State and EPA headquarters to respond to all issues raised, and has carefully considered comments submitted by the public on the State's application; I believe all concerns have been adequately addressed. I have determined that Arizona's program is "substantially equivalent", as defined in 40 CFR Part 123 Subpart F, to the Phase I Federal program. In accordance with Section 3006(c) of RCRA, the State of Arizona is hereby granted interim authorization to operate its hazardous waste program in lieu of Phase I of the Federal hazardous waste program. The practical effect of this decision is that generators, transporters, and owners and operators of hazardous waste management facilities in Arizona will be subject to the State of Arizona's hazardous waste program in lieu of the Federal hazardous waste program (40 CFR Parts 260–263 and 265) and will not again be subject to Phase I of the Federal program unless (1) the State fails to obtain final authorization by the deadline specified in Section 3006(c) of RCRA and implementing regulations, or (2) authorization is withdrawn for cause by EPA.

V. Authority

This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6912(a), 6926, and 6974(b).

VI. Compliance With Executive Order 12291

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

VII. Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the State. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 123

Hazardous materials, Indian—lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: May 5, 1982.

Sonia F. Crow,

Regional Administrator, Region 9

[FR Doc. 82-22574 Filed 8-17-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 123

[WH-5-FRL 2190-3]

Hazardous Waste Management Program; Indiana; Phase I Interim Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Granting of Phase I interim authorization to Indiana State hazardous waste program.

SUMMARY: The State of Indiana has applied for interim authorization of its hazardous waste program under subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA) and USEPA guidelines for the approval of State hazardous waste programs (40 CFR Part 123, Subpart F). USEPA has reviewed the Indiana hazardous waste program and has determined that the Indiana hazardous waste program is substantially equivalent to the Federal program. USEPA is hereby granting Phase I interim authorization to Indiana to operate a hazardous waste program in lieu of Phase I of the Federal hazardous waste program in its jurisdiction.

EFFECTIVE DATE: August 18, 1982.

FOR FURTHER INFORMATION CONTACT: Judith E. Stone, Waste Management Branch (5HW-TUB), U.S. Environmental Protection Agency, 111 West Jackson, Chicago, Illinois 60604; (312) 886-4179.

SUPPLEMENTARY INFORMATION:

I. Background

Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), requires USEPA to establish a comprehensive Federal program to assure the safe management of hazardous waste. Once a Federal program is established, USEPA is authorized under section 3006 of RCRA to approve certain State hazardous waste programs to operate in lieu of the Federal program in their jurisdictions. Two types of State program approval are authorized under RCRA: "Final authorization" is a permanent approval which may be granted to States whose programs are "equivalent" and "consistent with" the Federal program and provide adequate enforcement; "interim authorization" is a temporary approval for States which might not meet the requirements of final authorization but whose programs are at least "substantially equivalent" to the Federal program. RCRA contemplates that States receiving interim authorization will use the interim authorization period to make the changes in their regulations and statutes necessary to qualify for final authorization.

On May 19, 1980, USEPA published the first phase of the Federal hazardous waste program (40 CFR Parts 260–263 and 265) and guidelines for authorizing State hazardous waste programs under Section 3006 of RCRA (40 CFR Part 123). These guidelines set forth the requirements for Interim Authorization and the procedures which USEPA will follow in acting on State applications for interim authorization. They also provide that USEPA will grant interim authorization in two major phases (Phase I and Phase II), corresponding to the two major phases of the Federal program.

On January 13, 1982, the State of Indiana submitted to USEPA its application for Phase I interim authorization. On February 5, 1982, Indiana submitted a Clarification to the Attorney General's Statement, which made the application complete. In the April 12, 1982, **Federal Register** (47 FR 15609), USEPA announced the availability for public review of the Indiana interim authorization application. USEPA also indicated that a public hearing would be held on May 12, 1982, with the public record open until May 26, 1982. After detailed review of the final Indiana interim authorization application, USEPA transmitted comments to the State of Indiana on March 18, 1982. These comments requested additions and revisions to the Program Description, Attorney General's Statement, Memorandum of Agreement and Authorization Plan portions of the application. Indiana responded to USEPA's comments by submitting amendments to the above-mentioned portions of the Indiana application.

II. Responses to Public Comments

Comments on Indiana's Phase I interim authorization application were

made by two corporations, a public interest group, and a municipal environmental commission. Three of the commenters supported granting of Phase I interim authorization to Indiana. One commenter, a corporation, raised the following issues:

Comment

According to the commenter, Indiana's current regulations do not include any of the revisions made to the Federal regulations after January 1981. The commenter contends that these omissions jeopardize the substantial equivalence of Indiana's program with Federal requirements.

The commenter is particularly concerned that Indiana's regulations on financial responsibility differ from USEPA's April 7 and 16, 1982, amendments by not authorizing compliance through a financial test.

Response

Phase I interim authorization applications must be substantially equivalent only to those Federal regulations which were promulgated on or before May 19, 1980. See 46 FR 7964, 7965, January 26, 1981. Subsequent amendments must be incorporated in applications for additional components of the Federal program. Pursuant to Section 3009 of RCRA, a State is not required to incorporate amendments which are less stringent than its existing regulations.

In reviewing Indiana's Phase I interim authorization application, USEPA is required only to compare it against Federal requirements promulgated on or before May 19, 1980. USEPA believes Indiana's hazardous waste program is substantially equivalent to these requirements. In spite of this, the commenter's concerns over financial responsibility requirements may be alleviated since the State has indicated to USEPA that it will allow facilities to use a financial test on a case-by-case basis through a variance procedure.

Comment

The commenter contends that Indiana does not have a provision permitting the delisting of wastes produced at a particular facility. Further, the commenter objects to Indiana's regulations as duplicative because they require facilities to have wastes delisted by USEPA and to then petition Indiana for a variance.

Response

States are not required to have authority to delist hazardous wastes in order to obtain Phase I interim authorization. See 40 CFR 123.128. Therefore, this is not a basis for denying Indiana's application. Indiana has indicated that it plans to include delisting authority in the Environmental Management Act in the future. This statutory change should simplify the delisting process.

Comment

The commenter expresses concern that Indiana's permitting provisions do not contain a mechanism similar to USEPA's interim status which allows facilities to operate pending the issuance of permits. In addition, the commenter expresses confusion over what the standards are on which a State permit is based.

Response

Under the Federal program any facility which satisfies the three requirements in Section 3005(e) of RCRA has interim status. An interim status facility is treated as having been issued a permit to operate pending issuance of a RCRA permit. Until a facility has a RCRA permit it can only operate if it has interim status. A State does not need to have the exact mechanism of interim status for Phase I interim authorization. A State may adopt standards which are substantially equivalent to those in Part 265 of the Federal regulations (see 40 CFR 123.128(e)). Indiana has incorporated these requirements in 320 IAC 4-6-1. Thus, any permit issued by Indiana must require compliance with the State's version of Part 265 standards.

III. Decision

EPA has reviewed the complete application for Phase I interim authorization from the State of Indiana, and has determined that the State program is "substantially equivalent", as defined in 40 CFR Part 123, Subpart F, to the Phase I Federal program. In accordance with Section 3006(c) of RCRA, the State of Indiana is hereby granted interim authorization to operate its hazardous waste program in lieu of Phase I of the Federal hazardous waste program. The practical effect of this decision is that generators, transporters, and owners and operators of hazardous waste management facilities in Indiana will be subject to the State of Indiana hazardous waste program in lieu of the Federal hazardous waste program (40 CFR Parts 260–263 and 265) and will not again be subject to Phase I of the Federal program unless (1) the State fails to obtain final authorization by the deadline specified in 3006(c) of RCRA and implementing regulations, or (2) authorization is withdrawn for cause by USEPA.

IV. Compliance With Executive Order 12291

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

V. Certification Under the Regulatory Flexibility Act

Pursuant to the provision of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

VI. Authority

This notice is issued under the authority of Section 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

List of Subjects in 40 CFR Part 123

Hazardous materials, Indian—lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 82-22579 Filed 8-17-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 2F2596/R474; PH-FRL 2187-4]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the fungicide iprodione and its isomer and metabolite in or on certain raw agricultural commodities. This regulation to establish the maximum permissible level for residues of iprodione in or on the commodities was requested by Rhone-Poulenc Chemical Co.

EFFECTIVE DATE: August 18, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Henry M. Jacoby, Product Manager (PM)21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of January 13, 1982 (47 FR 1408) that announced that Rhone-Poulenc Chemical Co., Agrochemical Div., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852, had filed a pesticide petition (PP 2F2596) with EPA. This petition proposed that 40 CFR 180.242 be amended by establishing tolerances for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methyl ethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methyl ethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidine carboxamide] in or on the raw agricultural commodities apricots, cherries (sour and sweet), nectarines, peaches, and plums (fresh prunes) at 10 parts per million (ppm).

Rhone-Poulenc subsequently amended the petition by deleting the proposed tolerances for apricots and plums (fresh prunes) and increasing the level of permissible residues to 20 ppm in or on cherries (sour and sweet), nectarines, and peaches. Notice of filing of this amendment was published in the Federal Register of July 14, 1982 (47 FR 30640). The company revised the petition by adding restrictions on grazing livestock in treated orchards and to restrict the feeding of cover crops, thereby eliminating the need for tolerances for residues in meat, milk, poultry, and eggs.

There were no comments received in response to the notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerances included an acute oral (LD_{50}) rat study, an acute dermal rabbit study, an acute inhalation rat study, a 90-day dog feeding study with a no-observed-effect level (NOEL) of 2,400 ppm, a rat teratology study with a NOEL of 400 mg/kg/day, a rabbit teratology study with a NOEL of 400 mg/kg/day, a rate chronic oncogenicity feeding study with a NOEL of 1000 ppm, a mouse oncogenicity study with a NOEL 1250 ppm, a 3-generation reproduction rat study with a NOEL of 500 ppm, and a dominant lethal mouse mutagenicity study with no evidence of mutagenicity at 1,500 ppm or at 6,000 ppm. Using a 100-fold safety factor, the allowable daily intake (ADI) is 0.250 mg/kg/day and the maximum permissible intake (MPI) is 15.0 mg/day for a 60-kg person. Currently established tolerances and these tolerances result in a maximum theoretical exposure of 0.3508 mg/day for a 60-kg person and 2.34 percent of the ADI. Temporary tolerances have previously been established for residues of iprodione, its isomer, and metabolite in or on the raw agricutural commodities apricots, cherries (sweet and sour), nectarines, peaches, plums (fresh prunes), and almond nut meat.

There are no regulatory actions pending against continued registration of the pesticide. The metabolism of iprodione is adequately understood, and an adequate analytical method, gas chromatography utilizing an electron capture detector, is available for enforcement purposes.

The pesticide is considered useful for the purpose for which the tolerances are sought, and it is concluded that the establishment of tolerances for the combined residues of the fungicide iprodione, its isomer, and metabolite in or on the raw agricultural commodities cherries (sour and sweet), nectarines, and peaches will protect the public health. Therefore, the tolerances are established as set forth below.

This section is also being revised to reflect the common name "iprodione" that was adopted on April 7, 1982 by the American National Standards Institute, Inc.

Any person adversely affected by this regulation may, by September 17, 1982, file written objections with the Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances, or raising tolerance levels, or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 6, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.399 is revised to read as follows:

§ 180.399 Iprodione; tolerances for residues.

Tolerances are established for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methyl ethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methyl ethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidine-carboxamide], in or on the following raw agricultural commodities:

Commodities	Parts per million
Cherries (sour)	20
Cherries (sweet)	20
Kiwi fruit	10
Nectarines	20
Peaches	20

[FR Doc. 82–22250 Filed 8–17–82; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 1F2430/R472; PH—FRL 2190–5]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Cyano (3-phenoxyphenyl) Methyl 4-Chloro-Alpha-(1-Methylethyl) Benzeneacetate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide

cyano (3-phenoxyphenyl) methyl 4-chloro-alpha-(1-methylethyl) benzeneacetate in or on certain raw agricultural commodities. This regulation to establish the maximum permissible level for residues of the insecticide in or on the commodities was requested by Shell Oil Co.

EFFECTIVE DATE: Effective on August 18, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of December 23, 1980 (46 FR 61330) which announced that the Shell Oil Co., 1025 Connecticut Ave. NW., Suite 200, Washington, D.C. 20036, had filed a pesticide petition (PP 1F2430) with the EPA. The petition proposed that 40 CFR 180.379 be amended by establishing tolerances for residues of the insecticide cyano (3-phenoxyphenyl) methyl 4-chloro-alpha-(1-methylethyl)-benzeneacetate in or on the raw agricultural commodity sweet corn kernels plus cobs at 0.1 part per million (ppm).

The petition was subsequently amended to include corn fodder at 50.0 ppm; corn forage at 50.0 ppm; milk fat at 7.0 ppm; milk at 0.3 ppm; meat, fat and meat byproducts of cattle, goats, hogs, horses and sheep at 1.5 ppm.

There were no comments received in response to these notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances included an acute oral rat toxicity study with median lethal dose (LD_{50}) of 1–3 grams (g)/kilogram (kg) of body weight (bw) (water vehicle) and 450 milligrams (mg)/kg of bw (dimethylsulfoxide (DMSO) vehicle); a 90-day dog feeding study with a no-observed-effect level (NOEL) of 500 ppm (highest dose tested); a 90-day rat feeding study with a NOEL of 125 ppm; and 18-month mouse feeding study with a NOEL of less than 100 ppm with no oncogenic effects at the highest level fed (3,000 ppm); a 24-month mouse feeding study with a NOEL of 10–50 ppm for males and 50–250 ppm for females (no oncogenic effects were noted at 1,250 ppm, the highest dose tested); a 24-month rat feeding study that demonstrated no oncogenic effects at 1,000 ppm (only level tested—significantly decreased body weight was observed at this dose level); a 2-year rat feeding study with a NOEL of 250 ppm (highest level fed)—no oncogenic effects were observed; a 3-generation rat reproduction study with a NOEL of 250 ppm (highest level fed); teratology studies (in mice and rabbits, both negative at the highest dose of 50 mg/kg of bw/day); and the following mutagenicity studies: mouse dominant lethal (negative at: 100 mg/kg of bw, which was the highest level fed); mouse host-mediated bioassay (negative at 50 mg/kg of bw, which was the highest level fed); AMES test in vitro (negative); and bone marrow cytogenic study in the Chinese hamster (negative at 25 mg/kg of bw). The following studies assessing neurological effects were performed: A hen study negative at 1.0 g/kg of bw for 5 days, repeated at 21 days; a rat (8-day) acute study with a NOEL of 200 mg/kg of bw; at 15-month rat feeding study which resulted in a systemic NOEL of 500 ppm and a NOEL of 1,500 ppm with respect to nerve damage.

Data considered desirable but currently lacking is a ruminant feeding study with the photodegredate of the insecticide on lactating cows (or goats) to determine the level of photodegredate in milk. The petitioner has agreed in writing to submit the ruminant feeding study on the photodegredate in lactating cows (or goats) by August 21, 1983.

The acceptable daily intake (ADI) is calculated to be 0.125 mg/kg/day based on the 2-year rat feeding study and using a 100-fold safety factor. The maximum permissible intake (MPI) has been calculated to be 7.5 mg/day (60 kg). Approval of the tolerance for sweet corn would result in a theoretical maximum residue contribution (TMRC) of 1.0596 mg/day (1.5 kg) and utilize 14.3 percent of the ADI.

The metabolism of the insecticide is adequately understood for this use, and an adequate analytical method, gas chromatography, is available for enforcement purposes. There are currently no regulatory actions pending against the continued registration of this insecticide.

The pesticide is considered useful for the purpose for which the tolerances are sought, and it is concluded that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, on or before September 17, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Raw agricultural commodities, Pesticides and pests.

Dated: August 4, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.379 is amended by adding and alphabetically inserting the commodity "milk" and increasing the tolerance levels for the following commodities to read as follows:

§ 180.379 Cyano(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl) benzeneacetate; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Cattle, fat	1.5
Cattle, meat	1.5
Cattle, mbyp	1.5
* * * * *	
Corn, fodder	50.0
Corn, forage	50.0
Corn, sweet, kernels + cobs	0.1
* * * * *	
Goats, fat	1.5
Goats, meat	1.5
Goats, mbyp	1.5

Commodities	Parts per million
Hogs, fat	1.5
Hogs, meat	1.5
Hogs, mbyp	1.5
* * * * *	
Horses, fat	1.5
Horses, meat	1.5
Horses, mbyp	1.5
Milk	0.3
Milk, fat	7.0
* * * * *	
Sheep, fat	1.5
Sheep, meat	1.5
Sheep, mbyp	1.5
* * * * *	

[FR Doc. 82-22581 Filed 8-17-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[1F2554/R468; PH-FRL 2190-4]

Tolerances and Exemptions From Tolerances for Pesticides Chemicals in or on Raw Agricultural Commodities; Carbaryl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide carbaryl and its hydrolysis product in or on the commodity oysters. This regulation to establish the maximum permissible level for carbaryl in or on oysters was requested by the Oregon Department of Agriculture.

EFFECTIVE DATE: Effective on August 18, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 211, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of May 26, 1982 (47 FR 23024) which announced that the Oregon Department of Agriculture, 635 Capital St. NE., Salem, OR 97310, had filed a pesticide petition (PP 1F2554) with EPA proposing that 40 CFR 180.169(a) be amended by establishing a tolerance for the combined residues of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate) and its hydrolysis product (1-naphthol) in or on oysters at 0.25 part per million (ppm). No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance included a 2-year rat feeding study with a no-observed-effect level (NOEL) of 200 ppm; a 1-year dog feeding study with a NOEL of 400 ppm; an 18-month mouse oncogenicity study that was negative at 400 ppm (highest level tested); rat and monkey teratology studies that were negative for teratogenic effects at 375 milligrams/kilogram (mg/kg) and 20 mg/kg, respectively (highest levels tested); a 3-generation rat reproduction with a NOEL of 100 mg/kg/day (test material administered in diet) and 25 mg/kg/day (test material administered via tubation); and a rat dominant lethal assay with a NOEL of 200 mg/kg/day (highest level tested). Based on the 2-year rat feeding study with a 200 ppm NOEL and using a safety factor of 100, the acceptable daily intake (ADI) for humans is 0.1 mg/kg/day. The theoretical maximal residue contribution (TMRC) in the human diet from previously established tolerances for residues of carbaryl on a variety of raw agricultural commodities and this tolerance utilizes 78.03 percent of the ADI.

The metabolism of carbaryl is adequately understood for this use, and adequate analytical methods, colorimetric determination and gas chromatography, are available for enforcement purposes. "A Notice of Determination Not to Initiate Rebuttable Presumption Against Registration (RPAR)" was published in the **Federal Register** of December 12, 1980. Carbaryl was under consideration for the RPAR process because of possible teratogenic/fetotoxic, mutagenic, oncogenic, and viral enhancement effects. However, EPA reviewed the risks associated with the use of carbaryl and determined that 40 CFR risk criteria warranting an RPAR had not been met or exceeded. Carbaryl was, therefore, returned to the registration process.

The insecticide is considered useful for the purpose for which the tolerance is sought, and it is concluded that the establishment of this tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, on or before September 17, 1982, file written objections with the Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances, or raising tolerance levels, or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Raw agricultural commodities, Pesticides and pests.

Dated: August 3, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.169(a) is amended by adding and alphabetically inserting the raw agricultural commodity oysters to read as follows:

§ 180.169 Carbaryl; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Oysters	0.25
* * * * *	

[FR Doc. 82-22580 Filed 8-17-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300062A; PH-FRL 2169-1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Poly(Oxy-1,2-Ethanediyl), Alpha-(Carboxymethyl)-Omega-(Nonylphenoxy)

Correction

In FR Doc. 82-19026 apearing on page 30489 in the issue of Wednesday, July 14, 1982, make the following correction:

In the table for § 180.1001(c), the word "Surfacant" should have appeared under the "Uses" column instead of under "Limits".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15, 73, and 74

[Gen. Docket No. 78-391; FCC 82-333]

Improvements to UHF Television Reception

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (FCC) considers rule amendments for purposes of improving the UHF television service. The FCC has been concerned with the technical disadvantages faced by UHF television in comparison to VHF television, but finds that the UHF service is now a successful component of the nationwide telecommunications system. The Commission adopts changes in its regulations regarding broadcast television receivers, and describes past and present efforts to improve consumer information regarding television receiving antenna systems.

EFFECTIVE DATE: September 14, 1981.

FOR FURTHER INFORMATION CONTACT: Philip Gieseler, 653-5940.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 15

Communications equipment.

47 CFR Part 73

Television.

47 CFR Part 74

Television.

Adopted: July 22, 1982.

Released: August 6, 1982.

In the matter of improvements to UHF television reception, General Docket No. 78-391.

1. Today we conclude a Commission evaluation of ways to improve the UHF television service. This program was initiated because of technical disadvantages faced by UHF television stations (channels 14-83) compared to VHF stations (channels 2-13).[1] Our action today is only the most recent in a 30 year effort to improve the quality of television service to the American public, beginning with the initiation of the UHF television service in 1952.[2]

2. The growth of the UHF service has been tumultuous to say the least. In 1954, 125 UHF television stations had begun operation, but the number fell to as low as 84 in 1959. From that time, however, the number of UHF stations has increased steadily, with well over 400 stations now in operation.[3]

3. Government programs were in part responsible for the improvement to the UHF service. The *All-Channel Receiver Act of 1962* gave the Commission the authority to require that television receivers be capable of receiving UHF as well as VHF channels.[4] Between 1970 and 1973 we went even further and required TV receivers to have more comparable tuning for UHF television channels.[5] In 1976, we stipulated that television receivers must have a UHF receiving antenna if supplied with a VHF receiving antenna [6]; in 1978 we reduced the maximum allowable UHF noise figure of television receivers.[7] We instituted the UHF Comparability Task Force in 1978, and charged it with the responsibility of determining the effectiveness of possible further improvements to the UHF television service. The task force and our *Notice of Inquiry* in this proceeding were prompted by a Congressional appropriation specifically designated for a comprehensive evaluation of the UHF service.[8] Ten reports some sponsored by task force research funds and some written by the task force itself, have been released. These reports are listed in Appendix A. We have received comments on our *Notice of Inquiry* and on our subsequent *Further Notice of Inquiry and Notice of Proposed Rulemaking*, 45 Fed. Reg. 70023 (October 22, 1980), as well as comments directed to specific task force reports.[9] After full and careful evaluation of this record, we are now able to make our decisions.

The UHF Comparability Task Force

4. The work of the UHF Comparability Task Force emphasized that improvements to the UHF service would not be cost-free. In our initial *Notice* we stated "we are aware that any requirements to improve the technical quality of UHF reception may increase that cost of manufacturing antennas and receivers, a cost which will ultimately be borne by the consumers who purchase those items." [10] We stated that

[1] In brief, UHF stations must broadcast at higher and more costly power levels to achieve coverage similar to VHF stations; and UHF frequencies are more attenuated by natural obstacles such as terrain and foliage. In addition, television receivers have not always provided equivalent tuning and reception of UHF and VHF stations.

[2] *Sixth Report and Order*, Dockets 8736, 8975, 8976, 9175, 41 F.C.C. 148 (1952).

[3] There were 430 UHF television stations in operation, 263 commercial and 167 non-commercial, as of April 30, 1982. There were 631 VHF television stations in operation, 524 commercial and 107 non-commercial, as of the same date.

[4] PL 87-529, July 10, 1962; 76 Stat. 150; 47 U.S.C. 303(s); *First Report and Order* in Docket 14769, 27 Fed. Reg. 11698 (November 28, 1962).

[5] *Report and Order* in Docket 18433, 21 F.C.C. 2d 245 (1970); *Memorandum, Opinion and Order* in Docket 18433, 23 F.C.C. 2d 793 (1970); *Report and Order* in Docket 19268, 32 F.C.C. 2d 612 (1971); *Report and Order* in Docket 19722, 43 F.C.C. 2d 395 (1973).

[6] *Report and Order* in Docket 20839, 62 F.C.C. 2d 164 (1976).

[7] *Report and Order* in Docket 21010, 69 F.C.C. 2d 1866 (1978); *Memorandum Opinion and Order* in Docket 21010, 70 F.C.C. 2d 1176 (1978). Noise figure is a measure of the effectiveness of television receivers in displaying a weak television signal. The Commission's action required a noise figure of 14 dB for new receiver models in 1979 and for all receiver models in 1981, and a noise figure of 12 dB for new receiver models in 1982 and for all receiver models in 1984. However, the 12 dB noise figure standard was overturned in the U.S. Court of Appeals for the D.C. Circuit. *See Electronic Industries Association v. Federal Communications Commission*, 636 F. 2d 689 (D.C. Cir. 1980).

[8] *Notice of Inquiry* in Docket 78-391, 70 F.C.C. 2d 1162, 44 Fed. Reg. 3656 (January 17, 1979); hereinafter *Notice;* and Public Law No. 95-431, *Appropriations for Departments of State, Justice, Commerce, Judiciary and Related Agencies*, 92 Stat 1040 (October 10, 1978). *See also* Senate Report 95-1043, 95th Cong. 2nd Sess. (July 28, 1978).

[9] Comments have been received from several hundred members of the public and the following groups and organizations: American Broadcasting Companies, Inc.; American Subscription Television Companies; CBS, Inc.; Consumer Electronics Group of the Electronic Industries Association; Corporation for Public Broadcasting; Council for UHF Broadcasting; Electronics Industries Association of Japan; Field Communications Corporation; General Consumer Electronics; General Corporation; General Instrument Corporation; joint group of UHF television licensees (6 companies representing 12 stations); National Association of Broadcasters; National Telecommunications and Information Administration; National UHF Broadcasting Association; New York State Cable Television Association; Omega Communications, Inc.; Sarkes Tarzian, Inc.; Sony Corporation of America; Spanish International Communications Corporation; Springfield Television Corporation; Storer Broadcasting Company; UNC TV Network; University of the State of New York; and Zenith Radio Corporation.

[10] *Notice*, ¶ 2.

we would "determine which of several approaches for improving UHF television will best serve the consumer and the overall public interest, by analyzing the costs and benefits of particular improvements." [11] It has not been our intention to improve UHF television at any cost, but to uncover and promote those areas where changes in FCC regulations, technical insight or station operation could yield benefits substantially in excess of the burdens and costs incurred. That commitment has been borne in mind in our decision. The task force began by surveying the large body of existing technical information about UHF television, and determining where additional investigation was warranted. Further research was conducted in a variety of areas, but, based on the task force's preliminary assessment, was concentrated on (1) receiving antenna systems, and (2) determining the actual consumer difficulties, as opposed to pure technical difficulties, of the UHF service.[12] New and critical perspectives on the problem facing UHF were gained as a result of this work. Before we review the task force's specific recommendations and our decisions, we should highlight some of that group's overall findings.[13]

5. The task force determined that the receiving antenna system is the weak link in the chain of components from television transmitter to receiver. Previous assumptions about UHF receiving antenna equipment were found to be overoptimistic, and even laboratory measurements appear to overstate the quality of antenna equipment actually installed by the public. Superior receiving antenna equipment is available at low cost, the task force found, but unless the public has the knowledge and desire to install it, better equipment will not be utilized. Significant additional attention to changes in television receivers, over which this Commission has some regulatory control, will not eliminate the major difficulty of receiving antenna systems. The task force found that the quality of UHF television reception is under the control of broadcasters and viewers. Broadcasters choose, within broad limits, their power level and transmitting antenna height. Their choice is based on an attempt to operate at the profit-maximizing point, that is, where the incremental cost of improvements equals the incremental increase in revenues. For UHF transmission, the task force found that most broadcasters will not choose the maximum facilities our regulations allow. Viewers will make similar choices about the quality of receiving equipment, attempting to choose good quality equipment when they value clear reception highly. The task force concluded that it would be unwise for the government to constrain the choices of broadcasters and viewers, but that information could be provided that might make these decisions more informed. Significantly, the task force found that VHF channels are likely always to remain somewhat superior to UHF for television broadcasting due to fundamental laws of physics over which we have no control, but observed that exact equality with VHF was not required in order to achieve a diverse and competitive UHF television service. They advocated a viable and profitable UHF service on its own merits, without comparison to VHF.

Policy Statement

6. We believe that these findings are significant in several respects. First, they caution us against the temptation to require costly improvements in areas over which we have regulatory control in the vague hope that receiving antenna systems, which are the major difficulty, will improve. Second, they indicate that choices are already being made about the quality of UHF reception, by both broadcasters and viewers, and that this market is operating on a rational basis. Information uncovered by the task force may aid viewers in their choice of receiving antenna equipment and broadcasters in their choice of transmitting facilities, but this Commission should, whenever possible, continue to encourage their free choice. Finally, we find the call to judge UHF on its own merits is appropriate given the progress of this service and given the irrefutable fact that actual equality between the UHF and VHF television services cannot be expected to be achieved due to fundamental laws of physics.[14] Rather than judging UHF by a standard that is impossible to meet, we find the public interest best served by competition among diverse media, which does not necessarily imply or require absolute equality.

7. In many television markets, all allocated channels are either in use by stations on-the-air or under construction, or have applications pending. There are no available commercial allocations in any of the top twenty-five markets, which include 49% of all television households.[15] In the second twenty-five markets, all but four markets have no remaining vacant commercial allocations within thirty miles of the market city. In these major markets, the UHF service is a sufficiently attractive investment that the demand for commercial UHF channels equals or outstrips the supply. In many of these same markets there is intense competition in the form of multiple competing applicants for many of the UHF channels not yet in operation.

8. Many UHF broadcasting operations by and large are in no jeopardy of ceasing service to the public. The profitability of UHF broadcasting compares well with that of other broadcast media, as substantiated by financial reports submitted by broadcasters, summarized in Figure 1 and the accompanying table. This data shows that the majority of commercial UHF stations indicated that they were not profitable up to the mid-1970's. Since then, however, the percentage of UHF stations reporting profits has climbed to as high as 73%, has exceeded the percentage of FM stations reporting profits, and from 1976 to 1979 has been equal to or greater than the figure for AM stations. In 1980, the last year for which figures are available, the percentage of stations reporting profits were roughly equivalent for all three services: 58 percent for UHF TV, 59 percent for AM, and 55 percent for FM.[16] None of these services approaches the extremely favorable statistics for VHF

[11] *Notice*, ¶ 3.

[12] Considerable research has also been conducted in the area of interference immunity and reduced noise figure of television receivers. In particular, we have contracted with RF Monolithics to design an improved high performance receiver that might allow both low noise figure and the reduction of our UHF mileage taboos (contract no. FCC-0282). We plan to address that subject in Docket 78-392, *Technical Improvements to Television Receivers and Certain Transmitter Standards. See Notice of Inquiry*, 44 FR 3663 (January 17, 1979).

[13] A broader discussion of these findings can be found in *Comparability for UHF Television: Final Report*, FCC Office of Plans and Policy, September 1980, hereinafter Final Report.

[14] Since UHF broadcasters must transmit at much higher and more costly power levels in order to be adequately received, UHF broadcasters will also be disadvantaged by greater operating expenses.

[15] This excludes two vacant allocations that while technically in the market area are some distance from the market city: channel 63 is vacant in Bloomington, Indiana, 46 miles from Indianapolis (market number 20); and channel 55 is vacant in Kenosha, Wisconsin, 32 miles from Milwaukee (market number 25).

[16] We are aware that the financial information supplied to us by broadcast stations is not always considered reliable. *See e.g. A Study of Financial Reporting Requirements for Commercial Broadcast Stations*, final report under contract no. FCC 0193-6, T&E, October 31, 1977. Our present analysis, however, is restricted to a general comparison of UHF television to other broadcast media. Using the financial data in this comparative manner, we feel, may be more appropriate than reliance on the specific levels of profitability reported to us.

television stations, as shown in Figure 1. On the other hand, we judge that the AM and FM radio industries are reasonably healthy and that there is demand for existing and new radio stations by the business community and by the public. The same judgment is true for UHF television.[17]

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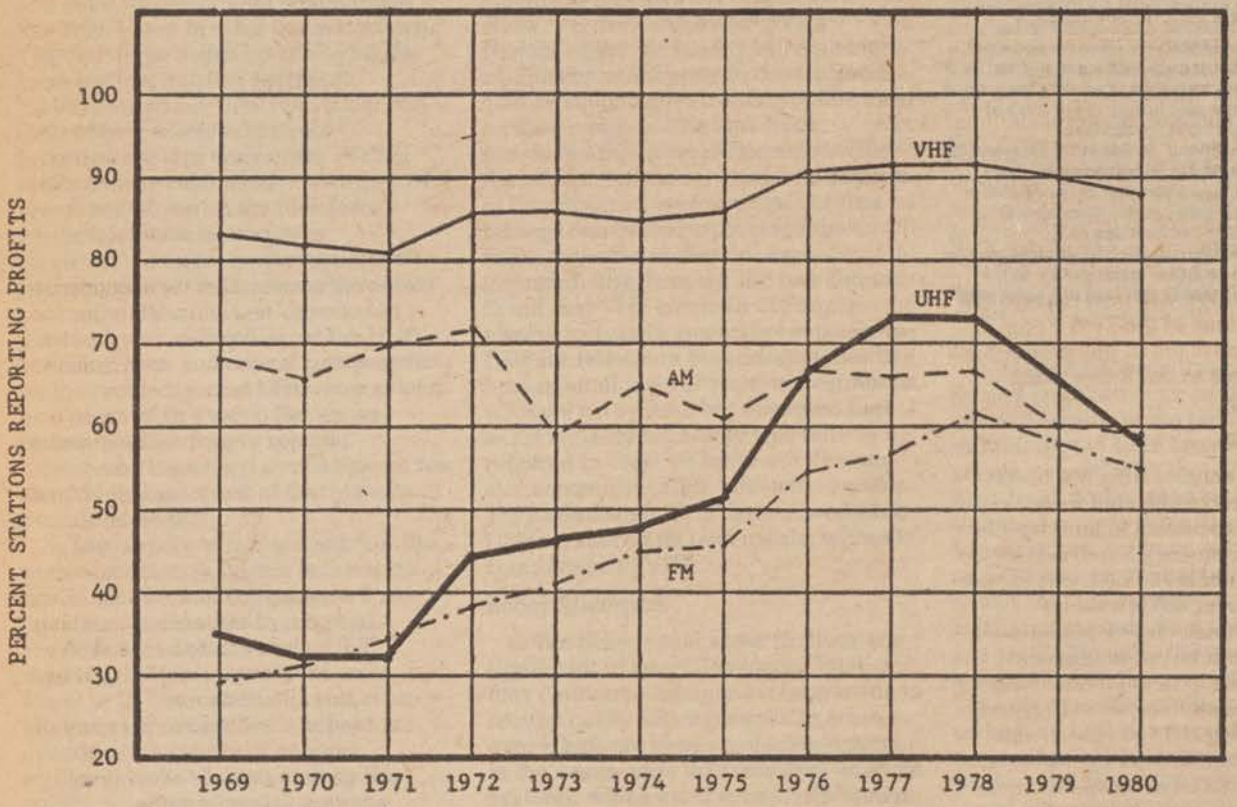
[17] Figure 1 shows that the percentage of stations reporting profitable operation declined for 1979 and 1980 for all four broadcast services. Because this decline is especially noticeable for UHF television, we analyzed the financial data for UHF more closely. For 1979 and 1980, the gross revenues per station continued to increase substantially, but UHF operating expenses increased at an even more rapid rate. Expenses increased mostly in the areas of "program expenses" and "general and administrative expenses." In this latter category, the expense for depreciation increased particularly rapidly. Thus it appears that part of the decline in the UHF curve in Figure 1 is due to increased investments in improved facilities and programming. Therefore, some UHF stations may be trading near-term profit for better service to the public, which presumably will lead to greater long-term profit.

Figure 1

Per Cent of Broadcast Stations Reporting Profits

Source: 1979 FCC Annual Report and Compilations of FCC Form 324 Submissions



	VHF-TV	UHF-TV	AM*	FM
1969	83	35	68	29
1970	82	32	66	31
1971	81	32	70	34
1972	86	44	72	38
1973	86	47	59	41
1974	85	48	65	45
1975	86	52	61	46
1976	91	67	67	55
1977	92	73	66	57
1978	92	73	67	62
1979	90	66	60	58
1980	88	58	59	55

* also includes AM/FM stations

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9. Another indication of the successful status of UHF television is the fact that stations are continuing in business, in contrast to the experience in the 1950's when many stations ceased operations. Our records indicate that no UHF stations have permanently ceased operations since 1976. If UHF television is not a viable service for those investing in it, we would expect to see at least some stations discontinuing service.

10. This Commission believes that a viable UHF television service that fulfills the diverse needs of the public is in the public interest, just as we are concerned with the benefits of all radio services. The changes in our regulations that we adopt today are based on the present status of UHF television. Consequently, we are not adopting fundamental changes to our rules, but rather are fine-tuning and finalizing a process that has been underway for three decades. We will now discuss the recommendations of the Task Force, the *Further Notice* issued in this proceeding, and the changes to our Rules being adopted today.

Channels 70–83

11. The frequencies from 806 to 890 MHz have been reallocated from television broadcasting to land mobile radio.[18] This frequency band, making up television channels 70 to 83, was at that time used by over 800 television translator stations; these stations were allowed to continue operating on a secondary basis to land mobile. New UHF translator stations were licensed on the remaining UHF channels, and many of the grandfathered stations on channels 70 to 83 have moved to lower frequencies on their own initiative, although about 500 remain as of April 1982.[19]

12. In a previous decision, we found that channels 70 to 83 should continue to be required on all television receivers.[20] Based on the analysis of the task force and the passage of eight years since our earlier decision, we now have a different perspective, and are today deciding that out all-channel television requirements do not apply to what were once TV channels 70 to 83. Specifically, this means that television receivers need not be equipped to receive channels 70 to 83, but if they are so equipped, these channels need not comply with our noise figure, tuning and other requirements found in §§ 15.63 through 15.70 of our Rules. The basic rationale for this change has been stated by the task force:

> A chief barrier to improving UHF television is the difficulty involved in designing systems that operate consistently well over bandwidths as wide as 70 television channels. Reducing this bandwidth by 14 television channels will not eliminate the problem, but it will decrease it.[21]

13. In our 1973 decision, we considered mandatory movement of television translators from channels 70 to 83, and found this would be an undue burden on translator operators. Today's decision does not establish a deadline for completing this move. Translator licensees will have considerable leeway in deciding when to shift to a lower UHF channel, and will be free to continue operating on their present channel for several years if they so choose, subject to their secondary, non-interference condition with land mobile stations. Manufacturers will have the choice of either including or not including channels 70 to 83 on TV receivers, just as they now choose to include cable television frequencies for some sets.[22] We expect that, as manufacturers engage in their normal design cycles, they will analyze the costs and benefits of including channels 70 to 83 for individual models, and will make their decisions accordingly. Some commenters believed that market pressure will continue to force receiver manufacturers to include channels 70 to 83. While we would not object to such an outcome, we think a more likely result is the gradual disappearance of receivers with these channels from store inventories. The population of these receivers in the hands of the public would diminish over an even longer period of time, in a cycle similar to the availability of non-UHF receivers after Commission implementation of the All-Channel Receiver Act in 1974. Translator stations will be able to decide, based on their own local circumstances, when in this cycle to convert to lower channels. We find that by implementing the change in this gradual and flexible fashion, the benefits of fewer UHF channels can be obtained with the least impact on existing translator licenses.

14. The Consumer Electronics Group of the Electronic Industries Association (CEG/EIA) supports this change. The Electronics Industries Association of Japan (EIAJ) supports the change but feels it would be wise to set a specific implementation date. The State University of New York (SUNY), although generally supportive of changes to improve UHF, notes that this specific proposal would impact their network of UHF translator stations. Field Communications Corporation supports the change principally because it believes that receiver manufacturers will find it easier to meet lower noise figure requirements. We feel that the time is right to encourage the evolution of UHF translators to channels below 70, and that an approach that does not specify an implementation date will minimize the burden on translator licensees.

15. Some commenters were concerned that not all UHF translator stations could find acceptable new frequencies. Since existing translators on channels 70 to 83 mostly serve isolated areas, however, we expect this problem to be minimal. General Consumer Electronics (GCE) opposes the proposed rule change, indicating that channels 70 to 83 could be used to transmit low-level radio signals from video games and other devices to a television receiver, allowing wireless interconnection. They indicated that a petition for rulemaking was being prepared in this regard. We do not see the 806 to 890 MHz band as uniquely suited for this use. Technologically, radio signals in any of the remaining channels from 2 to 69 could be used to provide a low level radio interface. Therefore, the considerable policy issues raised by the GCE proposal can be treated separately, should a petition for rulemaking be filed. Additionally, the Commission's All-Channel authority is limited to "frequencies allocated by the Commission to television broadcasting." Since GCE proposes that non-broadcast frequencies be required on television receivers for a non-broadcast use, we may not have the authority to accommodate their request as regards channels 70 to 83. The Council for UHF Broadcasting (CUB) proposed retention of channels 70 to 83 but relaxation of noise figure requirements on these channels, as an alternative to the Commission's proposal. They also argued that should we maintain our original approach, we should concurrently lower the UHF noise figure, arguing that to do otherwise would be a windfall to receiver manufacturers. Our interest, however, is not to maintain any

[18] *Memorandum Opinion and Order* in Docket 18262 (proceeding terminated), 34 RR 2d 758, 55 F.C.C. 2d 771 (1975).

[19] 599 stations are licensed on channels 70–83, but 98 have applications pending to move to lower frequencies, based on our Broadcast Bureau's April 1982 Engineering data base.

[20] *Memorandum Opinion and Order*, RM–2008, FCC 73–922, adopted September 6, 1973, released September 12, 1973.

[21] Final Report at p. 114.

[22] Since UHF channel 37 has been reallocated exclusively for radioastronomy uses, manufacturers also will be free to exclude this channel from television receivers, if they so choose. *See* 47 CFR 73.603(c) and 47 CFR 2 footnote US88.

certain level of overall regulation of television receivers, requiring stricter regulations in some respect in exchange for laxer regulation in another. Our role is to adopt regulations and remove or modify existing regulations in pursuit of the overall public interest. In the present case, we find that goal served by allowing manufacturers additional leeway in serving the needs of the public. Since the manufacture of television receivers is a competitive market, we can expect any "windfall," should it exist, to be passed on to consumers in the form of lower prices or additional improvements and features. However, we intend to consider the appropriate noise figure level in a separate proceeding.[23]

16. For the above reasons, we find that our proposal will aid the tuning and reception of UHF stations, will potentially reduce the cost of manufacturing television receivers, and will implement the change in the least burdensome way to licensees of translator stations presently operating between 806 and 890 MHz; therefore, we will adopt the change, modifying Parts 15, 73 and 74 appropriately, as indicated in Appendix C.

Equality Regulation

17. The task force sponsored research to determine optimum receiving systems not only in theoretical or laboratory configurations but in real life situations.[24] On the basis of this research it appears that the quality of UHF receiving antenna components (e.g. antennas and lead-in cable) in the hands of the public is considerably worse than has previously been assumed. One factor that contributes to this problem is the effect of the environment or receiving components. The task force found that the type of lead-in cable most used by the public—unshielded twin lead—appeared superior to shielded cable on the basis of laboratory measurements; but when environmental effects such as wetness and proximity to metal were taken into account, shielded cable such as coaxial cable and shielded twin lead can provide better performance. The task force therefore recommended the use of shielded cable and proposed the adoption of an "equality regulation" that would promote the use of shielded cable. "Equality regulation" was a term used by the task force for regulations that do not pose an absolute requirement of television receiver design, but instead require a particular treatment for UHF, if and only if it is included by the receiver manufacturer for VHF. Certain existing regulations are of this type, e.g. § 15.65(b) which requires a UHF antenna to be attached to a set if a VHF antenna is attached, and section 15.68(b)(2) which requires that tuning aids such as remote control and automatic frequency control, if included in a set design, operate for both UHF and VHF. Along this line, the task force proposed that if a coaxial antenna connector is provided for VHF, one should likewise be provided for UHF. Similarly, if shielded cable is used inside a set in the VHF portion, shielded cable should likewise be used in the UHF portion. The task force felt that such regulations would foster the use of shielded coaxial cable for UHF, thereby improving reception.

18. Field Communications Corporation (Field) supports the proposed rule and seeks a broad interpretation to include not only the specific areas cited by the task force but all present and future tuning and reception aids. The Council for UHF Broadcasting (CUB) likewise supports the proposed change in this broad sense. On the other hand, CEG/EIA disputes the contention that coaxial and other shielded cable is a superior lead-in and argues that in any regard VHF coaxial inputs provided on some television receivers are meant to facilitate connection to cable or master antenna systems rather than to provide an inherent advantage to VHF. CEG/EIA also argues that there is no basis for requiring shielded cable internally in a receiver since unshielded cable has not been identified as a source of UHF reception problems.

19. We have carefully weighed the benefits to the public to be derived from the proposed regulation relative to the burden of additional government oversight and find that at the present time institution of the proposed regulation cannot be justified. While we are not uncomfortable with the recommendation from our staff that shielded cable is to be preferred over unshielded cable as a general rule, this is a point about which there is some contention. We are aware that twin-lead cable can be fully acceptable in many circumstances if adequate attention is given to proper installation, and we are likewise aware of the advantages of shielded cable. The argument in favor of shielded cable is sufficiently compelling, we believe, in terms of uniformity of performance under a range of installation practices and environmental conditions, to form a general recommendation for its use; its proven benefits are not so profound and so universal, however, as to prompt us to adopt additional regulations that in many specific cases would provide no clear benefit. In particular, cable subscribers, who now number approximately one third of all television households, would receive no benefit from the adoption of the proposed rule, since UHF stations are received through the VHF input from cable systems. Likewise those viewers who are satisfied with the quality of reception from their present antenna systems would not appear to benefit. We must differentiate, therefore, between a general recommendation in favor of shielded lead-in cable and specific Commission requirements that attempt to foster this use from consumers who may not have need for or wish to take our advice.

20. We must also agree with CEG/EIA that unshielded UHF cable inside television receivers has not been clearly identified as a source of UHF reception problems. The basis for our original concern was a 1963 FCC staff report that indicated that unshielded cable could contribute to ghosting, especially at UHF.[25] However, task force research in 1980 determined that ghosting is not a significantly more severe problem on UHF than VHF; the significant picture quality disadvantage faced by UHF stems from a weak signal available at the picture display that results in picture "snow" or as no picture at all in extreme cases.[26] Moreover, shielded cable for VHF can decrease susceptibility to electrical noise and other types of interference that are not a problem for UHF. Thus the use of shielded cable for VHF in some television receivers but unshielded cable for UHF may be a rational response by manufacturers to problems that exist on VHF but not UHF.[27] Absent additional information,

[23] This will be undertaken in our Docket 21010, *UHF Television Receiver Noise Figures. See* 69 F.C.C. 2d 1866 (1978); 636 F. 2d 689 (D.C. Cir. 1980).

[24] See *Program to Improve UHF Television Reception*, W. R. Free, J. A. Woody, J. K. Daher, Georgia Institute of Technology, September 1980; and *Television Field Strength and Home Receiving System Gain Measurements in Northern Illinois*, R. D. Jennings, NTIA Report 81-68, U.S. Department of Commerce, March 1981.

[25] See *Report on the Analysis of Measurements and Observations, New York City UHF-TV Project*, FCC Report R-6303, March 1963, page 5.

[26] The Louis Harris survey sponsored by the Task Force determined that weak signal and "snow" were experienced by roughly twice as many respondents on UHF as on VHF channels. Ghosting was only slightly more severe on UHF channels (21%) than it was on VHF channels (17%). *See A Survey of Consumer Attitudes Regarding UHF Television*, Louis Harris and Associates, September 1980, hereinafter Harris Survey, at p. 210.

[27] The Harris Survey confirmed that electrical and CB/radio interference could be somewhat more severe on VHF channels, particularly low VHF channels from 2 to 6. *Ibid.*

the fact that our most recent research fails to indicate a substantial benefit from the use of shielded UHF cable inside television receivers convinces us that we should not move forward with the task force's proposal.

21. The task force proposed that existing equality regulations be revised to make it clear that these aids must be included for UHF if they are provided for VHF, but would *not* be required in the converse case.

> A manufacturer could choose to offer an improved tuning system for UHF, but would not be required to include the same type of system on VHF. The reason for this is because some aids, such as automatic frequency control, may be needed for UHF to achieve comparable tuning with VHF *without* AFC. Due to the technical difficulties involved in receiving UHF frequencies, we believe that manufacturers should be allowed to offer improvements to the UHF portions of receivers without necessarily including the same improvements on VHF. But due to these same technical difficulties, manufacturers should continue to include for UHF any improvements included on VHF.[28]

We agree with this rationale and have incorporated this change into our present rules, since it should allow manufacturers additional leeway in designing improved UHF systems.

Channel Selection

22. As indicated in paragraph 3 *supra*, we have instituted several rules in the past designed to make UHF channel selection systems more nearly comparable to VHF tuning systems. In brief, our present rules require UHF and VHF channel selection systems to be comparable in tuning accuracy, size, location, accessibility and, to the extent possible, legibility. *See* § 15.68(b) of the Commission's rules, 47 CFR 15.68(b). We will now consider whether these rules should be modified to incorporate the suggestions of the task force, and whether we should further restrict the types of tuning systems allowable under our rules. The systems presently available include the following: The *two-dial detent* tuner has separate dials for UHF and VHF, and click-stops for individual channel numbers. The majority of television receiver models use this type of tuner. The *one-dial menu* tuner typically has 18 or 20 channel positions, twelve for VHF channels 2–13, and 6 or 8 positions that can be set for any available UHF channel. The *pushbutton menu* tuner typically has 12 or 14 buttons. Each can be set to any available UHF or VHF channel. The *random access* tuner (also known as a "digital" tuner) has a keypad containing the numbers 0 through 9; channel 24 is tuned by pushing the numbers 2 and 4. The *pushbutton scan* tuner has up and down buttons that scan through the available UHF and VHF stations. Previously, a *two-dial continuous* tuner was widely used. This tuner generally employed a continuous tuning dial (i.e. no click-stops) for UHF and a click-stop dial for VHF. This type is no longer allowable under current Commission rules.

23. *Integrated Tuning.* Several parties filing comments in this proceeding urged the Commission to mandate one or more types of "integrated" channel selection systems for all television receivers. By "integrated" we mean that both UHF and VHF tuning is accomplished through the same dial or tuning system. Presently available integrated tuning systems include pushbutton tuners, one-dial tuners, and random access tuners. Non-integrated tuners, in contrast, have separate dials for UHF and VHF channels. The two-dial detent tuner is an example of a non-integrated system.

24. Preliminary evidence suggested that some types of tuning systems might foster increased UHF viewing. Based on a survey that it sponsored, Sarkes Tarzian, Inc. (Tarzian), a tuner manufacturer, indicates that "27% of the total sample stated that they would be more likely to watch more UHF stations if the UHF channel selector dial on their television set were comparable to the VHF dial, displaying all UHF channel numbers in the same size and manner as VHF channels."[29] A survey of UHF broadcasters by the National UHF Broadcasters Association (NUBA) indicates the belief that the most important difficulty with UHF is the channel selection system.[30] The Louis Harris survey sponsored by the task force indicates that 47% of the sample felt it was easier to tune VHF channels, 3% felt it was easier to tune UHF channels, and 33% felt there was no difference. The greater ease of tuning VHF channels was less pronounced in some cases; for certain types of electronic channel selectors, over half the respondents indicated that there was no difference in tuning UHF and VHF channels.[31]

25. This body of evidence implies that use of improved tuning systems might lead to increased UHF viewing. This data is not definitive, however, because it relies on what people say they will do rather than what they will actually do, what others say viewers' problems are, and on impressions rather than actions. The task force continued to investigate this area in an attempt to determine whether there is a clear correlation between actual viewership of UHF stations and the types of channel selectors in use. This further research was conducted because unless there is a reasonably strong relationship between type of selector and actual viewership (as opposed to statements as to what viewership might be), requiring improved UHF channel selector systems will not increase the audience of UHF stations.[32]

26. The task force contracted with the Arbition Company to obtain a large data set on UHF and VHF television viewing on particular receivers and the type of channel selectors on those receivers. The information was collected from viewing diaries for the November 1979 Arbition Television Market Report and from telephone interviews with households completing diaries. Information from nearly 4,000 households was used to compare viewing habits against any of six types of channel selectors, and a detailed statistical analysis was performed on this data set. The task force concluded that:

> [D]espite many claims over the years that one or another channel selector type affects viewing, no systematic relationship was found between channel selector type and UHF viewing. In particular, no substantial evidence was found that any of the various electronic channel selectors increase UHF viewing. Such results do not prove the absence of such a relationship—it is methodologically impossible for any statistical analysis of data to do that. These results do, however, cast doubt on assertions that channel selectors have a substantial effect on UHF viewing. Such assertions should not be accepted without empirical evidence demonstrating that the relationship exists. Unless and until this requirement is met, a rational case for additional channel selector regulation cannot be made.[33]

[28] Final Report at p. 119 (footnote omitted).

[29] Comments of Sarkes Tarzian Inc., March 30, 1979, at page 8.

[30] Comments of the National UHF Broadcasters Association, May 7, 1979, at pages 4, 5 and 10.

[31] Harris Survey at p. 118–119.

[32] If a relationship is found, it would also be necessary to show the direction of the causality, i.e. whether some types of UHF channel selectors promote an increase in UHF viewing or whether, alternatively, those that highly desire UHF viewing purchase particular types of channel selectors.

[33] *UHF Viewing and Television Channel Selector Type*, by S.R. Brenner and J.D. Levy, FCC Office of Plans and Policy, February 1982, page 6 (footnote omitted). The report includes both a mean value analysis and a regression analysis. The former involves statistical examination of mean UHF viewing for each channel selector type; see p. 21–26. The report presents results of "t tests" in which mean viewing for each relevant *pair* of channel selector types is compared. In most cases, differences in the mean values are not statistically significant. A more stringent test can be done on the data in table 3 of the report. This "F test" examines the hypothesis that mean viewing is the same across all six channel selector types; all six are

27. Four parties submitted comments on the report, and we have analyzed their responses in depth. CEG/EIA endorsed the findings, while Field, Tarzian, and CUB criticized it. Before considering the criticisms, it is desirable to put the study in context. The report argued that *a priori* reasoning about the UHF viewing-channel selector relationship was inconclusive, and that it was therefore necessary to examine actual behavioral data. The channel selector report is not necessarily the ultimate explanation of UHF viewing; but appears to be the most careful study done so far, and it provides no support for additional channel selector regulation. The most frequent criticism of the analysis is that it did not control for all important influences of UHF viewing, particularly reception quality and programming. However, although the mean value analysis in the report did not purport to control for additional influences, the study included regression analyses for precisely this reason.[34] CUB further claims that the categories should have been based on "ease of tuning," rather than type of channel selector in use. We cannot agree, because ease of tuning is a subjective concept. Even so, if most people found certain channel selectors easier to tune, and if that led to increased UHF viewing, the regression results would have reflected it. CUB also argues that many of the random access tuners may have been misclassified by respondents. Measurement error is always a possiblity when data are collected. We have no reason to believe that it is any more likely with random access than with other selector types.[35]

28. Tarzian faulted the report for excluding one-dial all-channel selectors. However, Tarzian is incorrect in claiming that a survey it submitted earlier "demonstrated that many of the tuning difficulties cited by viewers as factors in not viewing UHF more often are eliminated by a one-dial all-channel tuner."[36] That survey appears to deal with two-dial tuners, and relies on attitudinal rather than behavioral data. Moreover, no estimate of the magnitude of the effect on UHF viewing is given.

29. A few other methodological issues were raised. CUB alleges that the report improperly recommended reliance on statistical analysis to the exclusion of *a priori* reasoning. In fact, the report simply stressed the importance of analyzing empirical information when *a priori* reasoning leads to conflicting conclusions. *A priori* reasoning can be useful in cases when the conclusion reached is obvious and undisputed, or when significant empirical data is unavailable. In the present case, comprehensive data and analysis was undertaken, and it will be afforded appropriate weight. We also reject the suggestion that the report ignores the full UHF problem because it does not add channel selector effects to other components of the UHF system. The other components—the transmitter, the receiver, and the receiving antenna—are technically independent of each other and of the channel selector.

30. For all these reasons, the conclusion that there is little support for mandating only limited types channel selector systems appears sound. We find that, even though preliminary evidence indicated the possibility of a correlation between type of channel selector and amount of UHF viewing, the best information we have gathered fails to support such a relationship. Absent a convincing showing in this regard, we are not in a position to support rule changes that mandate the use of integrated channel selection schemes on all television receivers, especially since to do so might impose costs on manufacturers and thus ultimately on consumers.

31. Our consideration of this issue has been a two-pronged approach. First, it was our desire to determine whether particular types of channel selectors would foster UHF viewing. Second, we wished to determine whether government intervention is appropriate because of either a failure of the television receiver industry to respond to the needs of consumers or to important national goals such as improved UHF systems. At present, close to half the color television receivers sold use some form of integrated electronic tuning, and this proportion may increase if the cost of the electronic circuits continues to decline.[37] Consumers have a wide range of channel selector types from which to choose, including many that exceed FCC tuning requirements. Thus, our decision not to impose additional channel selector regulation is dictated not only by the absence of evidence of a correlation between UHF viewing and channel selector type, but also by a reluctance to intercede in an industry process that appears to be an appropriate and useful response to meeting our concerns.

32. *Legibility of UHF Channel Readout.* Section 15.68(b)(3) of our rules requires that "UHF tuning controls and channel readout on a given receiver shall be comparable in size, location, accessibility and legibility to VHF tuning controls and readout * * *." In our decision adopting this rule, we made it clear that differences between UHF and VHF channel readout which follow directly from the larger number of UHF channels displayed or from efforts to meet other tuning requirements would be acceptable.[38] Section 15.68(d) requires, however, that some types of channel selectors have channel numbers for at least every other UHF channel. The task force pointed out that due to the large number of UHF channels, the numerical markings on these types of UHF channel selectors were much

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considered at once. The F tests have been performed and *in every case* it was impossible to reject (at the five percent level) the hypothesis that the relevant mean values were identical. This strengthen the conclusions of the report.

For a discussion of the statistical methodology, see S.B. Richmond, *Statistical Analysis* (New York: Ronald Press, 1964), pp. 304–309. There it is noted that the "pairwise" test used in the report is biased in the direction of finding significnt differences where none in fact are present.

[34] "Dummy variables" were used in the regression equations to pick up differences in programming across markets and in reception quality. Two indicators of reception quality were included initially. One of them, receiving antenna type, turned out to be measured inaccurately; for this reason antenna variables were dropped from consideration. However, the ADI (Area of Dominant Influence) variable, a rough measure of how close each household is to the center of the market (and hence to most television transmitters), is an indicator of reception quality. Furthermore, even if the study had not controlled for reception quality, this omission would only bias the results if channel selector type and reception quality are correlated. We have no particular reason to believe that channel selector type and reception quality are correlated. In order for the data to be consistent with CUB's hypothesis that random access tuners increase UHF viewing, it would have to be true that receivers with such tuners also had unusually poor reception quality. This could happen if viewers who buy random access tuners install particularly poor quality receiving antennas. Such a correlation pattern does not appear plausible.

[35] If misclassification is a random phenomenon, it will not affect the regression coefficients. Furthermore, a pretest of the questionnarie indicated that 18 of 20 random access selectors in a test sample were identified correctly. The pretest was not designed to be used for statistical inference, so we find CUB's apparent application of statistical "confidence intervals" to be inappropriate.

[36] Comments of Sarkes Tarzian, Inc., May 10, 1982, at page 5.

[37] Electronic Industries Association statistics indicate that 49.2 percent of 10.8 million color receivers sold in 1980 had electronic tuning. *See TV Digest*, Vol. 21, No. 11, March 16, 1981, p. 13. Black and white television sets are generally equipped with mechanical tuners; 6.73 million of these units were sold in 1980 according to EIA. Thus electronically tuned sets account for approximately half of color television sales and approximately one-third of all television sales. One receiver manufacturer's 1983 product line is reported to have 45 of 47 color television models equipped with electronic tuning, and has electronic tuning in some black and white models. *See TV Digest*, Vol. 22, No. 20, May 17, 1982, p. 8.

[38] *Memorandum Opinion and Order* in Docket 18433, 23 F.C.C. 2d 793, 807 (1970).

smaller than they would need to be if the requirement for numbering at least every other channel did not exist. The task force recommended eliminating the specific numbering requirement, in order to provide receiver manufacturers additional discretion in meeting the intent of the comparable readout provision:

> The marketplace may find that the tradeoff between the amount of UHF channels specifically marked and the size of the numerical indications would be more optimum at some other point. That is, if a manufacturer proposed to numerically mark every third channel, or fourth channel, we see no advantage in prohibiting this practice, if it allowed for UHF channel numbers as large as those on the VHF dial. The tradeoff between how many numbers are specifically marked and how large these numbers are can effectively be made by receiver manufacturers.[39]

33. CEG/EIA supports the elimination of the specific channel numbering requirement. Zenith Radio Corporation, in support of the change, has filed a request for waiver of the present rule pending adoption of our proposal. Their request states in part:

> In order to comply with the specific requirement of rule § 15.68(d) for numbering of at least every other UHF channel, the UHF channel numerals are necessarily smaller than the VHF channel numerals, and we have had occasional consumer complaints that they are difficult to read. The channel readout systems [proposed] * * * provide UHF channel numbering with the same prominence as the VHF numbers, with specific numbering for each fifth channel and individual markings for each intervening channel. The proposed channel readout systems * * * obviously make UHF stations easier to select than the [current] system.[40]

34. Oppositions to the Zenith request have been filed by the Council for UHF Broadcasting, by counsel to Field Communications Corporation, and by a joint group of UHF licensees, permittees, and applicants (hereinafter "Joint Parties"). CUB argues that the Zenith request would "not advance the ultimate goal, which is achievable only by random access digital tuning, and in fact represents a step backward, away from UHF–VHF comparability."[41] Counsel for Field appears to support this view. This claim that only random access digital tuning will obtain UHF/VHF comparability is not supported, however, by our statistical examination, which failed to uncover a correlation between channel selector type and UHF viewing. The Joint Parties indicate that:

> [S]pecific channel number identification [is important] to television stations, UHF and VHF, to establish themselves in their communities and to attract viewers. For example, in Washington, D.C., WDVM–TV promotes itself heavily as "the one and only TV–9"; and WRC–TV in promoting and publicizing its news programs identifies them as "News Center 4." The purpose of the foregoing is to facilitate the public's locating the station and their programs on the tuner dial.[42]

35. The claim that broadcast stations lose their identity when all channels are not specifically numbered on the selector dial is rebutted by the experience of the aural broadcasting services. The effectiveness of promotional identifiers such as "AM 63" and "FM 105" does not seems to be diminished by the inclusion or exclusion of these specific numbers on radio tuning dials. Similarly, there is no indication that "TV–22" or "45" or any UHF station is now disadvantaged by the current requirement for marking the channel number of only every other UHF channel, or will suffer from the change proposed by the task force. In fact, instituting this change appears to be essentially risk free. If the system we have proposed and Zenith seeks is in fact an inferior tuning method, it is highly unlikely that consumers would select it over the present numbering systems in any appreciable quantities; but if it survives in the marketplace, it will be because consumers find that a smaller quantity of large, more legible numbers is more convenient than a large number of smaller channel numbers. The present regulation appears to have the unintentional effect of promoting very small channel numbers and may be unnecessarily inhibiting the institution of an improved system. Therefore, because the change will afford greater flexibility to receiver manufacturers in meeting the needs of the public, we will modify our rules accordingly. Zenith's proposed system is fully consistent with this rule change, and their request for waiver is therefore moot.

36. We stress that our requirement for UHF controls to be comparable with VHF controls (47 CFR 15.68(b)(3)) will continue to apply. This will insure that the goal behind our all-channel requirements remains intact. In order to clarify our past decision, noted in paragraph 32 *supra*, that differences in UHF and VHF channel readout are acceptable which follow directly from the larger number of UHF channels available, we will add a note to that effect to the existing rule.

37. *Minimum Number of Tuning Positions.* The task force noted that some types of channel selectors do not necessarily allow for the reception of all broadcast TV channels available in an area. Section 15.68(b)(1) of our rules provides that television receivers must be equipped for reception of at least six UHF television stations. For receivers meeting only this minimum requirement used in areas that receive more than six UHF stations, some stations will not be able to be received (without retuning the mechanism each time a precluded station is desired). Similarly, this rule provides that a combination UHF/VHF tuning system must have at least eleven positions. For receivers meeting only this minimum requirement used in areas that receive more than eleven UHF and VHF stations, some stations will similarly be precluded from the channel selection system. The task force made various estimates of the present and future population potentially able to receive seven or more UHF stations and twelve or more UHF and VHF stations. These estimates ranged from about 7 to 39 million persons.[43] Not all of these persons would be affected, however; the Harris survey indicated that about 15% of the population have the types of channel selectors that have limited tuning positions and of this group, only 3% indicated that they did not have enough channel positions. The task force noted that while this is not a large proportion of the population (less than one million people), greater numbers may be affected in the future as additional stations begin operation, as more homes become equipped with these types of tuners, and as individual homes obtain improved UHF reception. They presented three possible options for dealing with this problem:

> FCC rules [could be modified] to either raise the minimum number of channel positions currently allowed or to preclude the use of tuners that have limited tuning positions altogether. The chief advantage of this course is that it would correctly anticipate the growth of UHF television and of the many video services that are predicted for the future. Of course, for many people it would impose tuning positions that are not needed or necessarily desired. Another option is to require an information label on such receivers that warns the public that reception of all channels may not be available to them. This option has the advantage that it allows consumer choice, but may not satisfy the root problem of all sets being able to receive all stations in an area. Another possibility is to conclude that

[39] Final Report at page 99.

[40] Request for Waiver of rule 15.68(d) submitted by Zenith Radio Corporation, March 11, 1981, pp. 3–4.

[41] Comments of the Council for UHF Broadcasting, May 1, 1981, at page 2.

[42] Comments of Joint Parties, May 1, 1981, at page 5.

[43] See Final Report at pages 110–111.

public demand for television receivers with more tuning positions will eventually cause manufacturers to correct this problem without additional FCC regulations.[44]

38. Again, when we look at current actions by consumers and manufacturers, we see a rationally operating marketplace that requires no additional government intervention. Whereas our rules require at least six UHF tuning positions, the tuners with which we are concerned often have eight UHF positions. Whereas our rules require at least eleven UHF/VHF positions, the pushbotton tuners with which we are concerned often have fourteen positions. This is strong support for an observation of the task force that "manufacturers may be becoming marketplace-driven as opposed to regulation-driven."[45] Likewise, when we look to the habits of consumers, we find that a much smaller proportion of the public is unable to receive all the channels available to them than estimated by the task force. One plausible explanation for this is that most consumers who are able to and who wish to receive many television stations simply avoid purchasing television receivers that are limited in this regard.

39. We see no indication that consumers as a whole are being harmed or that the goal of improved UHF reception is being hindered in such a manner that our present rules should be extended. We would be more concerned if receivers with limited tuning positions were the only types available, but this is not the case. Consumers have a broad range of television receiving equipment from which to choose, much of which exceeds our present requirements. In every area it is possible to receive all available UHF and VHF stations with readily available equipment. As additional stations begin operation and as consumers demand it, the number of tuning positions available on the affected types of television receivers is likely to increase even further beyond our minimum requirements, but this will be due to the needs of consumers rather than demand of this Commission. Perhaps a problem could arise as additional stations begin operation.[46] If the present situation were to change greatly in the future without a corresponding change in channel selector designs, we could revisit this issue.

40. *Other Changes in Our Comparable Tuning Rules.* The proposed rules given in our *Notice* included several editorial changes and some updating, and these are being incorporated into the rules we adopt today. In many cases this simply removes an effective date now well passed; no changes in the substance of any rule is being adopted, unless otherwise discussed in this *Report and Order.* A comprehensive review of Part 15 of our Rules is now underway in our Office of Science and Technology; at the conclusion of that review, further procedural and editorial changes may be instituted.

41. The task force proposed to delete § 15.68(d) of our rules concerning 70-position UHF detent tuners. They argued that this type of tuner did not require different treatment from other types of selectors and could meet the remaining provisions of our rules. Several parties filed comments seeking clarification to this proposal or objecting to it. They pointed out that the effect of the proposed change might be that automatic frequency control would be newly required for all black and white receivers, which they claimed is unnecessary to achieve comparable tuning accuracy between UHF and VHF and would be more complex and budensome than indicated by the Final Report (page 98–99). Our intent in large part is to clarify and consolidate existing rules, and to provide reciever manufacturers somewhat greater flexibility in meeting the intent of our comparable tuning provisions. Therefore, tuning accuracy found to be acceptable in the past will continue to be acceptable. Further we will no longer require that manufacturers employing the 70-position detent tuners submit measurements of tuning accuracy to us; however, they must continue to certify that our channel selection requirements in Section 15.68 are met. *See* 47 CFR 15.70(d).

42. The task force also proposed to eliminate § 15.68(b)(3), which contains rules regarding a type of channel selector that displays UHF channels in groups of three; they noted that this type of selector did not appear to be in use and would not necessarily be precluded by the rules retained. No comments were received on this specific proposal, and we will incorporate the change. We note further that this subsection contains specific methods of complying with our general comparable tuning provisions that do not appear warranted. That is, if our general provisions regarding comparability of tuning controls and channel read-out are met, then these specific provisions are unnecessary. The full rule at § 15.68(b)(3) has been:

Tuning controls and channel read-out. UHF tuning controls and channel read-out on a given receiver shall be comparable in size, location, accessibility and legibility to VHF tuning controls and read-out on that receiver. If any television receiver utilizes continuous UHF tuning for any function (e.g., as the basic tuning mode, for presetting a detent mechanism for repeated access at discrete tuning positions, or for tuning a channel which cannot be assigned to discrete tuning position), that receiver shall be equipped to display the approximate UHF television channel the tuner has been positioned to receive. If any television receiver is equipped to provide repeated access to UHF television channels at discrete tuning positions, the manufacturer shall provide for the display of the precise UHF channel selected or shall provide to the user a means of identifying the precise channel selected without the use of tools: Provided, however, that the 70 UHF channel numbers may be displayed in groups of three or less at each of 24 settings, if

(i) The tuning mechanism uses a single control to select the VHF channels;

(ii) Any one of the three channels simultaneously displayed can be precisely tuned to the correct frequency; and;

(iii) The reset accuracy (with AFC, if provided) is sufficient to eliminate the need for routine fine tuning.

43. The simplified rule we adopt today retains only the subsection title and first sentence. Consistent with paragraph 36 *supra,* we are adding a note to this subsection to make it clear that differences are acceptable which follow directly from the larger number of UHF channels displayed, if it is clear that a good faith effort to meet the requirements of this section has been made.

44. Finally, for the pushbutton type of channel selector that typically has 12 or 14 buttons that each can be set to a specific UHF or VHF channel, the task force noted that manufacturers often pre-label and preset these tuners for the 12 VHF channels, thereby requiring a specific additional tuning procedure to receive the UHF stations available in an area that is not needed to VHF. The task force proposed that, if these tuners were preset and pre-labled by manufacturers, half of the available channels should be set for UHF channels. Sony Corporation argues that we have no evidence that indicates that the current procedure adversely affects UHF viewing. Further, they argue that manufacturers and consumers both benefit from the present procedure which maximizes the number of television stations that can be immediately received, in effect arguing that we are attempting to equalize UHF

[44] Final Report at p. 109.

[45] Final Report at p. 100.

[46] As of April 1982 there were 1,061 television stations on the air in the U.S. In addition, there were 4,341 television translator stations licensed. Our decision to initiate a low power television service may greatly increase the number of television stations in operation. See *Report and Order* in Docket 78–253, 47 Fed. Reg. 21468 (May 18, 1982).

and VHF by degrading present practices regarding VHF reception. Finally, they point out that the one-dial menu tuner that typically has 12 positions for VHF and 6 or 8 positions for UHF has a defect similar to that found for pushbutton tuners, but that no treatment of that type of tuner is proposed. The Electronics Industries Association of Japan (EIAJ) and EIA/CEG likewise oppose the change. We believe that the arguments these parties have made are valid. The proposed changes were put forward prior to receiving the results of our most recent channel selection research, discussed in paragraphs 26–30 *supra*. This latest research, which we believe is the best presently available, fails to indicate a correlation between presently available channel selectors and UHF viewing. Further, with Sony we agree that it would be inequitable to adopt the proposed labeling regulation for pushbutton tuners but to exempt the one-dial memory tuners from this same requirement. Since one-dial menu tuners typically have the twelve VHF channels hard-wired into the tuning mechanism, and 6 or 8 positions available for any UHF channel, compliance with a requirement for labeling 50 percent of the available channel positions for UHF would be impossible with this type of tuner. For these reasons, we have decided that the proposed regulation should not be adopted.

Consumer Information

45. Because the receiving antenna system is the weak link in the chain from transmission to reception of UHF signals, and because the purchase and installation of a good quality receiving antenna system is in the hands of individual consumers, the task force recommended that a program of consumer information be established, to consist principally of two components. First, they recommended that a bi-annual program of antenna measurements be established in our office of Science and Technology. This would provide uniform information that manufacturers of superior receiving equipment could use in their product labeling or advertising. Second, the task force issued a news release containing six succinct points for improving UHF reception and recommended that these points be given broad distribution. For reasons we will now explain, we have decided not to institute the first of these consumer programs but to continue to advocate the second.

46. In recommending the adoption of an FCC antenna measurement program, the task force noted that there is presently little quantifiable data available for consumers to compare the performance of televison receiving antennas. Because antenna gain can be measured and tabulated in several different ways, the small amount of performance data that does exist can be misleading.[47] The task force envisioned a program in which the government would provide objective information, to be used voluntarily by those antenna manufacturers who could benefit by it and by others who wished to improve the reception of UHF television. They estimated the cost of such a program to be initially less than $100,000, perhaps rising to about $150,000 every other year if receiving components other than antennas (such as baluns and splitters) were also included. Eventually, they believed that the industry might be willing to carry on the program of its own accord.

47. We have carefully evaluated the benefits obtainable from government antenna measurements in view of the costs that would be incurred. Whereas the task force concluded the resource impact of this program would be minimal in view of its expected benefits, further analysis by our staff indicates that the specific antenna measurement information proposed may not be as useful as general conclusions stemming from measurements already completed in the task force research.[48] In this most recent staff analysis, seventeen sets of antenna measurements were grouped according to type of antenna, and the average gain and standard deviation were compiled.[49] A table indicating this analysis is found in Appendix B. This table indicates that, with the exception of one parabolic antenna, no antennas measured outperformed the bowtie-with-screen type in average performance.[50] The four-bay bowtie-with-screen antennas were otained at a cost of approximately ten dollars each, and provide performance superior to many antennas costing much more; the eight-bay bowtie-with-screen antenna provides performance almost equal to the better of the two parabolic antennas tested, at less than half the cost. It therefore appears that a general recommendation in favor of the bowtie-with-screen style of antenna would go a long way toward providing the public with the information they need to improve their UHF reception.[51]

48. This view is reinforced when we observe that the same antenna types tend to have very similar average gains. The average gain of the four-bay bowtie antennas varied by only 0.1 dB. The average gain of the yagi with corner reflector antennas varied by only 0.9 dB. It appears that the manufacturer or model of an antenna is less important than the general type of antenna in most cases—bowtie with screen, yagi with corner reflector, etc. An information program that advocated the use of bowtie-with-screen antennas could provide consumers with an antenna several dB better than what they otherwise might choose; the additional benefit provided by a full bi-annual measurement program appears small in comparison to the benefit gained by knowledge of the superior performance of the bowtie-with-screen antennas.

49. UHF television receiving antennas vary by several dB over the bandwidth from channels 14 to 69. For this reason, the actual gain of an antenna at a particular channel can vary by several dB from the average gain. This creates isolated anomalies in our recommendation of bowtie-with-screen antennas. For example, if a particular consumer wanted the best possible performance on channel 24, with no regard for the reception of other channels, the yagi with corner reflector antennas tested outperform the worst bowtie with screen at this frequency.[52] We recognize that some few specific exceptions may exist where our general recommendation will not hold. Our interest, however, is in providing the greatest food to the vast majority of consumers, consistent with the resources of this Commission. That goal is unquestionably served by our recognition that certain types of UHF receiving antennas, notably the bowtie-

[47] Antenna gain can be measured with reference to an isotropic antenna or a dipole antenna, or can be simply estimated from theoretical calcuations. Gain can be tabulated as maximum, miminum, average or median gain. Statements of the gains of different antenna are not useful for comparisons unless they are calculated by the same, repeatable procedure.

[48] The additional analysis described in this paragraph uses data from the task force-sponsored report *Program to Improve UHF Television Reception*, W. R. Free, J. A. Woody, J. R. Daher, Georgia Institute of Technology, September 1980.

[49] Standard deviation is a statistical measure of variability; 68 percent of a normally distributed sample lies within plus or minus one standard deviation of the average value, so a small standard deviation indicates that most values are close to the average value.

[50] The parabolic antenna that was superior to the bowtie with screen antennas used a two-bay bowtie with screen feed and a six foot parabolic reflector. The other parabolic antenna measured used a more traditional yagi feed and did not perform nearly as well. In a sense, then, all of the top-performing antennas used the bowtie with screen design.

[51] The task force has additionally determined that a two-bay bowtie with screen indoor antenna gives good performance. The table in Appendix B includes only outdoor UHF antennas.

[52] The other two four-bay bowtie antennas measured were equal to or better than the corner reflector antennas at this frequency.

with-screen, tend to outperform other types in all but very few isolated cases. We believe this finding can be readily understood by consumers and will be beneficial to them. In contrast, we note that our table in Appendix B, while it provides much more complete information, is not nearly as readily understood. A recommendation in favor of bowtie-with-screen antennas, due to its succinctness and clarity, may prove more beneficial than an extensive measurement program that provides considerably more scientific information but is less understandable to the public at large and more costly to implement.[53]

50. Just as we believe that specific, succinct information about the best UHF receiving antennas would serve the public, disseminating other kep points about UFH receiving antenna systems would provide consumers with the information needed to obtain improved reception. Based on task force recommendations and the record on this proceeding, we believe that the following six points would be the most helpful and understandable to the public:

—An outdoor antenna is much more likely to provide better picture quality than an indoor antenna.

—Separate UFH and VHF outdoor antennas can provide better performance on UHF than can a combination UHF/VHF antenna, at little or no extra cost.

—Four-bay and eight-bay "bowtie" UHF antennas provide good performance at low cost. (The most expensive antennas are not necessarily the best.) A two-bay bowtie UHF antenna is a good choice for an indoor antenna.

—Antennas should be installed by "probing" for the best receiving location; signal strength can vary significantly over a very short distance; thus, the antenna should be installed at the location that provides good picture quality for the channels desired.

—Shielded cable (either coaxial or shielded twin lead) is generally recommended over conventional "twin lead" cable to connect an outdoor antenna to a TV set. RG–6 is a good quality cable. Coaxial cable should be used with baluns when connected to the antenna and set.

—Preamplifiers that boost the TV signal may provide improved UHF picture quality, but a television serviceman should be consulted about their use, since in the wrong circumstances "preamps" can cause interference.

[53] The task force indicated that information concerning receiving antenna gain would be of the greatest use to consumers. Some commenters believe that other parameters such as front-to-back ration, beamwidth and standing wave ratio are also important. These additional parameters, if included in a measurement program, would be even less understandable to consumers than the Appendix information and would be even more costly to implement.

51. We have previously issued a news release containing the six consumer tips.[54] Additionally, our Consumer Assistance and Information office has conducted a comprehensive program designed to disseminate this key information. They have printed approximately 100,000 copies of a leaflet containing this information and have used FCC mailings and a variety of methods for distribution to the public. Television appliance stores exhibited considerable interest in making this information available; some leaflets were given to broadcasters for distribution, the Post Office was provided copies, and several thousand leaflets were distributed by the Consumer Information Service in Pueblo, Colorado. Articles concerning improved UHF reception have appeared in commercial publications since the Final Report, due to the work of the task force and the Consumer Information and Assistance Office.[55]

52. The question before us is to what degree the distribution of this information should be continued by us, and to what degree the responsibility for distributing information that will improve UHF reception should be borne by industry. We believe that broadcasters, manufacturers and their various industry associations all have an incentive to distribute information that will aid the public in obtaining adequate television reception. Broadcasters desire good reception by the public in order to serve satisfactorily as large an audience as possible. Television receiver manufacturers likewise want the public to be satisfied with products purchased, and consumers are much more likely to be satisfied with a television receiver if the connection of that receiver to a recommended antenna system provides good picture quality. Manufacturers of receiving antennas and related equipment have an incentive to supply the public with good quality equipment at a price consumers are willing to pay. This Commission also has a definite stake in improved UHF reception. To the extent limited Commission resources will allow, we believe it is in the public interest to help provide information consumers need to obtain good quality television reception, in a joint effort with industry. This is a responsibility that broadcasters and receiver manufacturers appear fully willing to accept, based on the comments in this proceeding. The Public Broadcasting Service has published a booklet designed to provide UHF reception information to the public.[56] Instructions for television receivers, receiving antennas and other components contain information designed to provide for good television reception. Field Communications in its comments describes an extensive consumer information program:

> Field * * * is about to launch a campaign in the San Francisco market, in cooperation with at least two other major San Francisco Bay area UHF broadcasters, designed to inform consumers about ways of improving UHF reception. Through the use of television spot announcements Field intends to inform viewers that they may not be obtaining the best possible reception of their television receivers from UHF stations. Interested viewers will be offered a free pamphlet describing ways to improve UHF reception and will be referred to a leading antennas manufacturer for more detailed information. Field is confident that this program will help reduce that portion of the UHF handicap resulting from the use of inadequate antenna receiving equipment.[57]

53. We applaud the initiatives of Field, PBS, the National Association of Broadcasters and others in providing information that will help improve UHF reception. Our role in this effort has been to determine the information that is most important and to refine it into understandable and accurate form. The six consumer tips made by the task force provide such succinct and foundational information. The six points are brief and reasonably easy to understand, yet they provide the information that consumers most need to know. We intend to republish limited copies of our leaflet, and distribute them through the resources of our Consumer Assistance and Information Office. We trust that those who have a stake in improved UHF reception will work with us to publish, broadcast and otherwise disseminate these fundamental points. Broadcasters can have this or similar information on hand to distribute to the public, perhaps in a program similar to that described by Field, *supra*. One or more broadcasting trade groups may be able to coordinate and organize these activities. Similarly, major manufacturers or trade organizations may find distribution of this information effective but inexpensive public relations, particularly since our experience with television retailers

[54] "UHF Guidelines Help Viewers Improve UHF Reception," September 18, 1980.

[55] This includes writeups in *Television Guide* (a TV listing magazine), general interest magazines such as *Redbook* and specialized magazines such as *Radio Electronics*.

[56] "PBS/UHF Guide," copyright 1976 by the Public Broadcasting Service. A reprint of this guide has been jointly sponsored by PBS and the National Association of Broadcasters.

[57] Comments on Field Communications, March 6, 1981, at pages 10–11 (footnote omitted).

indicates an interest in distributing this material. Thus we expect that further action by the Commission beyond what we have described will not be required for UHF reception infomation to reach the hands of the public. The incentives of the marketplace can provide for information distribution that is more effective and efficient than this Commission is able to achieve. Broadcasters, manufacturers and industry groups are able to analyze our information and, if they wish, modify it based on their individual circumstances or perhaps technical preferences. And they can decide the best means of distribution in individual television markets, and the appropriate level of effort in each case. We encourage those in industry who will benefit from improved UHF reception to provide this dissemination.

Additional Areas

54. Additional Commission proceedings are relevant to technical improvements to the UHF television service. In a separate proceeding, we address the maximum UHF noise figure level that is appropriate for achieving UHF performance comparable to VHF performance.[58] In Docket 78–348, we are establishing a standardized and repeatable method for measuring noise figure.[59] In Docket 78–393, we are concluding an evaluation of television performance standards including measurements for weak signal performance and interference susceptibility.[60] To the extent that respondents discussed these issues in their comments to this proceeding, our staff has considered their arguments in the context of the separate proceedings indicated.

55. One of the task force's recommendations was for the FCC to encourage experimentation with new systems that might improve the energy efficiency of UHF broadcasting, since power consumption is a major expense for UHF television stations. This is in part due to the appreciably higher power levels required for UHF transmission and in part by the inefficiency of current UHF transmission technology. Since the task force recommendation was made, Durham Life Broadcasting Service, licensee of WPTF–TV, channel 28, Durham, North Carolina, has requested and been granted an experimental authorization to operate their aural transmitter at less than the 10% of visual power required by § 73.682(a)(15) of our rules. The Durham Life experiment may provide information useful in determining whether the present regulation is appropriate, and consideration of this question will be undertaken in our Docket 78–392, which is investigating improvements to television receivers and concomitant changes in our transmission standards.[61]

56. Both the task force and PBS have been involved in analyzing further approaches that may reduce the power consumption of UHF stations or, alternatively, to allow increased transmitted power at the current power consumption level.[62] We are hopeful that these will prove to be catalytic efforts, leading to further research and development that may eventually greatly improve the transmission efficiency of UHF broadcasts.

57. A final recommendation of the task force was for further investigation of the Commission's technical planning and propagation prediction tools. UHF stations should have a realistic set of expectations for the coverage they can provide, but the task force found that current UHF coverage models were unreasonably optimistic.[63] We intend to pursue an evaluation of our current propagation and coverage prediction techniques in our Office of Science and Technology.

The UHF Comparability Mandate

58. From the inception of this proceeding, we have made it clear that our approach to seeking improvements in the UHF television service would be based on the costs versus the benefits or various alternatives.[64] Our goal has not been to achieve UHF comparability at any cost, but rather to determine where the public interest is served by agency attention and where government oversight is not warranted in view of the costs incurred or the progress of private parties in resolving our concerns. Some respondents have argued that it is not within this agency's discretion to evaluate the UHF service in this manner, but that we are bound by the All-Channel Receiver Act to achieve an improved UHF service, ostensibly at any cost.

59. For example, Field states that "[t]he All-Channel Receiver Act * * * conferred an affirmative obligation on the Commission to require that all television receivers 'be capable of adequately receiving all channels, both UHF and VHF.' " [65] They go on to say that:

> The Task Force uses a cost-benefit analysis to decide what options for achieving parity should be recommended * * *. Attempting to achieve UHF comparability in this way assumes that certain improvements to UHF television are too costly to recommend for consideration * * * The Commission must not forget that it is under congressional mandate to attempt to remedy every element of the UHF problem rather than dealing with only one of many causes of the problem.[66]

60. These commenters misread our statutory discretion under the Act. Section 303(s) is permissive, allowing the Commission authority for instituting requirements for television receivers to adequately receive all channels, but not demanding that this authority be exercised to an extent that would be contrary to the public interest.[67]

61. Some respondents additionally quote language from a Senate Subcommittee Report to indicate that the Commission is required to achieve UHF comparability:

> "[T]he intent of the All-Channel Receiver Act of 1962 has not been realized. UHF television broadcasting remains sorely disadvantaged within the national television system. The [Senate] Committee [on Appropriations] directs that the Commission devise a plan for UHF to reach comparability with VHF in as short a time as practicable * * * This plan should address all the technical and regulatory aspects of achieving parity and should set a schedule for dealing with each, including dates for achieving specific goals, such as noise level reductions." [68]

62. In complying with the direction expressed in the 1978 Senate Subcommittee Report regarding improvements to the UHF service, our senior concern is and must be to achieve the overall public interest, convenience and necessity in the regulations we

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[58] *See Report and Order* in Docket 21010, 69 F.C.C. 2d 1866 (1978). *See also* 636 F. 2d 689 (D.C. Cir. 1980).

[59] *Report and Order* in Docket 78–348, ——— FR ——— (———, 1982).

[60] *Report and Order* in Docket 78–393, ——— FR ——— (———, 1982).

[61] *Notice of Inquiry* in Docket 78–392, 44 FR 3663 (January 17, 1979).

[62] *New Technical Opportunities for UHF Television Transmitters*, C. C. Cutler, prepared for the UHF Comparability Task Force, February 1980; *Progress Report on UHF–TV Transmitter Improvement*, J. T. Wilner, T. Keller, PBS Engineering Report E8010, July 1980.

[63] The two major problems with current coverage predictions cited by the task force are that current prediction models do not adequately address the effects of terrain, and they overstate the quality of UHF receiving antenna equipment in the hands of the public.

[64] See for example our *Notice of Inquiry* at paragraphs 2 and 3.

[65] Comments of Field Communications Corporation, March 6, 1981, at 2.

[66] *Ibid.* at page 5.

[67] Section 303(s) of the Act provides that the Commission shall "*(h)ave authority* to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of receiving all frequencies allocated by the Commission to television broadcasting * * *" (emphasis added). 47 U.S.C. 303(s).

[68] Senate Report 95–1043, 95th Cong., 2nd Sess. (July 28, 1978).

promulgate. Our past actions with regard to lower UHF receiver noise figures, channel selector regulations and other areas noted in paragraph 3 *supra* are testament to this Commission's commitment to a fully successful UHF service. The task force has made it clear, however, that we are limited by distinct physical laws in the ability to fully equalize the UHF and VHF television services. Furthermore, the task force found that by far the most important improvement to the UHF service beyond what we have already accomplished resides in the receiving antenna systems purchased and installed by the public.[69] This Commission is not required to regulate the quality of receiving antennas that can be purchased by the public, nor are we required to adopt regulations that have costly implications and little or no known benefit, or to act in areas that are best left to the operation of the private marketplace. Our past and present actions have achieved improvements to the UHF service to the extent that government regulatory action can appropriately do so. The fact that further improvements appear to be possible through the actions of broadcasters and private citizens does not alter that conclusion.

63. Achievement of a successful UHF service has depended on improving all possible subsystems in the television delivery scheme. In the area of UHF transmission, the task force has provided information to help broadcasters determine the level of power and antenna height that is appropriate for their individual operation, and has hopefully served as a catalyst in initiating research attention into improving the cost-effectiveness of transmitting at the high power levels required for adequate UHF coverage. In the area of the television receiver, this Commission has adopted significant regulations over the years that have helped establish UHF television as a viable broadcasting medium. Most recently, due in large part to the efforts of the task force, we have determined that the remaining link in a greatly improved UHF service is the receiving antenna system. Our analysis indicates that the capability for achieving UHF reception comparable to VHF reception now depends principally on the choices made by the public in purchasing and installing good quality reception equipment that is readily available in the marketplace.

64. The dichotomy presented by our evaluation of the UHF service is that, on one hand, this service is more able to meet our goals for delivering diverse and valuable programming to the American public; on the other hand, considerable additional improvement to the UHF service is possible if the public were to install good quality receiving antenna systems. The UHF television service has grown to the point that today we can state that significant progress has been made. The fact that even further improvement to this service is possible through non-regulatory action gives us even greater optimism. We trust that, to the extent that consumers desire improved UHF reception, they will obtain it in part through the efforts of UHF broadcasters and manufacturers in providing the information determined to be important. Likewise, to the extent that improved and more efficient transmission methods become available, UHF broadcasters will have the incentive to pursue them. We conclude that there is room for further growth and expansion of the UHF television service well beyond its present successful status without substantial additional intervention on our part.

65. In light of the foregoing and pursuant to authority contained in sections 1, 4(i) and 303 of the Communications Act of 1934, as amended, it is ordered, that the rule amendments set out in Appendix C are adopted, effective September 14, 1982. It is further ordered, that this proceeding is terminated.

66. For further information concerning this proceeding, the contact person is Philip Gieseler, Office of Plans and Policy, (202) 653–5940.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A.—Reports of the UHF Comparability Task Force

Comparability for UHF Television: A Preliminary Analysis, P. B. Gieseler, V. D. Armstrong, A. D. Felker, S. R. Brenner, FCC Office of Plans and Policy, September 1979. NTIS accession no. PB 301267/AS.

Indoor Television Antenna Performance, R. G. FitzGerrell, U.S. Department of Commerce, NTIA Report Number 79–28, October 1979. NTIS accession no. PB80–126598/AS.

New Technical Opportunities for UHF Television Transmitters, C. C. Cutler, Stanford University, February 1980; updated February 1981. NTIS accession no. PB81–175358.

Television Receiver Noise Figure Study, J. B. O'Neal, Jr., N.C. State University, March 1980.

A Survey of Consumer Attitudes and Experience Regarding UHF Television, J. M. Boyle, Project Director, Louis Harris and Associates, September 1980.

Program to Improve UHF Television Reception, W. R. Free, J. A. Woody, J. K. Daher, Georgia Institute of Technology, September 1980. NTIS accession no. PB81–175341.

Comparability for UHF Television: Final Report, P. B. Gieseler, V. D. Armstrong, S. R. Brenner, A. D. Felker, F. O. Setzer, FCC Office of Plans and Policy, September 1980. NTIS accession no. PB82–218710.

Television Field Strength and Home Receiving System Gain Measurements in Northern Illinois, R. D. Jennings, U.S. Department of Commerce, NTIA Report Number 81–68, March 1981.

UHF Reception and Television Preamplifiers, A. D. Felker, FCC Office of Plans and Policy, April 1981.

UHF Viewing and Television Channel Selector Type, S. R. Brenner, J. D. Levy, FCC Office of Plans and Policy, February 1982. NTIS accession number PB–177577.

Reports with NTIS accession numbers are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22151.

[69] The receiver manufacturing industry has achieved an improvement in the average UHF noise figure of 3 dB, from 12 dB to 9 dB. Final Report at p. 89. As more efficient UHF transmission technology is developed, some stations may be able to double their present power levels, resulting in an improvement of another 3 dB. In contrast, the improvement available from installing a good quality receiving antenna system can be 15 dB or more. Even if further improvements in television receivers and transmission technology were possible, those changes would be small in comparison to the benefits from good quality receiving antenna systems.

APPENDIX B.—COMPARISON OF UHF RECEIVING ANTENNAS [1]

Antenna type	1980 cost	Gain on UHF channels indicated							
		14	24	34	44	54	64	Average	Standard deviation
8-bay bowtie with screen (1 sample)	$32.18	9.5	14.8	15.0	14.3	15.0	11.9	13.4	2.3
Parabolic:									
Sample No. 1	54.80	−1.1	8.7	11.9	12.3	13.2	11.7	9.5	5.4
Sample No. 2	66.42	11.6	11.7	16.1	17.0	15.9	15.1	14.6	2.3
Average	61.61							12.0	

APPENDIX B.—COMPARISON OF UHF RECEIVING ANTENNAS [1]—Continued

Antenna type	1980 cost	Gain on UHF channels indicated							
		14	24	34	44	54	64	Average	Standard deviation
4-bay bowtie with screen:									
Sample No. 1	10.55	15.0	6.0	8.0	12.0	10.5	16.0	11.3	3.9
Sample No. 2	10.80	9.0	8.5	10.3	13.5	11.5	16.0	11.5	2.9
Sample No. 3	9.44	9.0	9.4	13.0	13.1	12.8	11.4	11.5	1.9
Average	10.26							11.4	
Yagi with corner reflector:									
Sample No. 1	19.95	7.0	8.5	6.3	10.5	10.5	14.0	9.5	2.8
Sample No. 2	15.75	9.0	7.0	5.0	10.0	7.5	10.0	8.1	2.0
Sample No. 3	12.94	5.0	7.5	6.8	12.0	11.5	11.0	9.0	2.9
Sample No. 4	19.95	5.0	8.0	9.0	12.5	13.5	11.5	9.9	3.2
Sample No. 5	23.90	5.5	8.0	5.8	7.0	11.0	13.5	8.5	3.2
Sample No. 6	37.59	5.5	8.5	7.8	11.5	11.5	11.0	9.3	2.4
Average	21.68							9.0	
1-bay bowtie with corner refector:									
Sample No. 1	9.65	6.0	8.5	8.0	8.5	7.5	12.0	8.4	2.0
Sample No. 2	8.35	4.0	6.5	5.8	8.0	8.0	12.0	7.4	2.7
Average	9.00							7.9	
log periodic:									
Sample No. 1	18.25	10.5	6.5	7.5	8.0	8.0	12.0	8.8	2.1
Sample No. 2	21.66	4.8	2.5	7.2	7.4	6.5	2.4	5.1	2.3
Average	19.96							6.9	
Yagi (1 sample)	18.45	10.5	0.0	−7.0	−9.5	−15.7	−6.0	−4.6	9.0

[1] This information is taken from *Program to Improve UHF Television Reception*, a report to the FCC by the Georgia Institute of Technology, September 1980. Availble measurements above channel 69 and from antennas modified by attachments or pruned elements were not included in this table. Likewise combination UHF/VHF antennas were not included.

Parts 15, 73, and 74 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. In § 15.63, paragraph (c)(2) and the Note in paragraph (c)(1) are revised to read as follows:

§ 15.63 Radiation interference limits.

* * * * *

(c) * * *

(1) * * *

Note.—If measurements cannot be made on one or more of the frequencies listed because of the presence of signals from licensed radio stations, measurements should be made on a nearby frequency. The report should indicate the actual frequency(ies) on which measurements were made. If the receiver is not capable of receiving channels above 806 MHz the measurements at 900 and 931 MHz may be omitted.

(2) The average of the measurements shall not exceed 350 mv/m.

* * * * *

2. In § 15.65, the heading and paragraphs (a) and (b) are revised and paragraph (c) is added to read as follows:

§ 15.65 All-channel television broadcast reception: General requirements.

(a) All television broadcast receivers shipped in interstate commerce or imported from any foreign country into the United States, for sale or resale to the public, shall be capable of adequately receiving all channels allocated by the Commission to the television broadcast service. A television broadcast receiver is capable of adequately receiving all channels if it meets the requirements of §§ 15.65, 15.66, 15.67, and 15.68 in effect on the day of manufacture.

(b) Television receivers which have an antenna affixed to the VHF antenna terminals must also have an antenna designed for and capable of receiving all UHF television channels affixed to the UHF antenna terminals. If a VHF antenna is provided with, but not affixed to a receiver, a UHF antenna shall also be provided with the receiver.

(c) If equipment and controls which tend to simplify, expedite or perfect the reception of television signals (e.g., AFC, visual aids, remote control, or signal seeking capability referred to generally as tuning aids) are incorporated into the VHF portion of a television broadcast receiver, tuning aids of the same type or comparable capability and quality shall be provided for the UHF portion of that receiver.

3. In § 15.66, paragraph (a) is revised to read as follows:

§ 15.66 All-channel television broadcast reception: Noise figure.

(a) *Noise figure.* The noise figure for any television channel 14 to 69 inclusive shall not exceed the value shown in the table in this paragraph. A television receiver model is considered to comply with the noise figure of *X* dB if the maximum noise figure for channels 14–69 inclusive of 97.5 percent of all receivers within that model does not exceed *X* dB.

* * * * *

4. In § 15.67, paragraph (b) is revised to read as follows:

§ 15.67 All-channel television broadcast reception: Peak picture sensitivity.

* * * * *

(b) The picture sensitivity of a television broadcast receiver averaged for all channels between 14 and 69 inclusive shall not be more than 8 dB larger than the peak picture sensitivity of that receiver averaged for all channels between 2 and 13 inclusive.

5. In § 15.68, the heading, introductory text of paragraph (b) are revised; (b)(2) is reserved; paragraph (b)(3) Note is added; and paragraph (d) is reserved to read as follows:

§ 15.68 All-channel television reception: Channel selectors.

* * * * *

(b) On a given receiver, use of the UHF and VHF tuning systems shall provide approximately the same degree of tuning accuracy with approximately the same expenditure of time and effort: *Provided, however,* that this requirement will be considered met if the need for routine fine tuning is eliminated on UHF channels.

(1) * * *

(2) [Reserved]

(3) *Tuning controls and channel read-out.* UHF tuning controls and channel read-out on a given receiver shall be comparable in size, location, accessibility and legibility to VHF controls and read-out on that receiver.

Note.—Differences between UHF and VHF channel readout which follow directly from the larger number of UHF television channels available are acceptable if it is clear that a good faith effort to comply with the provisions of this section has been made.

(c) * * *

(d) [Reserved]

6. In § 15.70, paragraph (c) is reserved to read as follows:

§ 15.70 Comparability of tuning information to be submitted pursuant to § 15.45(b).

* * * * *

(c) [Reserved]

* * * * *

PART 73—RADIO BROADCAST SERVICES

§ 73.603 [Amended]

1. In § 73.603, the table in paragraph (a) is amended to remove channels 70–83 and the corresponding table entries for channels 70–83.

§§ 73.610, 73.614, 73.682, 73.683, 73.685, 73.687 and 73.689 [Amended]

2. In Subpart E of Part 73, in all references to channel 83, the number 83 is replaced by the number 69. This includes the following:

§§ 73.610 (b)(1), 73.610 (c)(1), 73.610 (d), 73.614 (b) table, 73.614 (b) table footnote, 73.614 (b)(1), 73.682 (a)(4), 73.682 (a)(9)(iii), 73.682 (a)(9)(iv), 73.683 (a) table, 73.683 (b) (three changes), 73.685 (a) table, 73.685 (e) (two changes), 73.687 (a)(1), 73.687 (a)(2), 73.687 (a)(3) (two changes), 73.687 (a)(b), 73.699 Figure 3, 73.699 Figure 4.

3. In § 73.681, the definition for *Television broadcast band* is amended to read as follows:

§ 73.681 Definitions.

* * * * *

Television broadcast band. The frequencies in the band extending from 54 to 806 megahertz which are assignable to television broadcast stations. These frequencies are 54 to 72 megahertz (channels 2 through 4), 76 to 88 megahertz (channels 5 and 6), 174 to 216 megahertz (channels 7 through 13), and 470 to 806 megahertz (channels 14 through 69).

* * * * *

§ 73.689 [Amended]

4. In § 73.698, Table IV is amended to remove channels 70–83 and the corresponding table entries for channels 70–83.

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. In § 74.702, paragraph (a)(3) is revised to read as follows:

§ 74.702 Channel assignments.

(a) * * *

* * * * *

(3) Application for new low power TV or TV translator stations or for changes in existing stations, specifying operation above 806 MHz will not be accepted for filing. License renewals for existing TV translator stations operating on channels 70 (806–812 MHz) through 83 (884–890 MHz) will be granted only on a secondary basis to land mobile radio operations.

2. In § 74.707, paragraph (a)(1)(iii) is revised to read as follows:

§ 74.707 Low power TV and TV translator station protection.

(a)(1) * * *

* * * * *

(iii) 74 dBu for stations on channels 14 through 69.

[FR Doc. 82-22516 Filed 8-17-82; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-111, RM-3978, RM-4010]

FM Broadcast Station in Lost Cabin, Wyo.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Class C Channel 256 to Lost Cabin, Wyoming, in response to separate petitions filed by John S. Tyler and Roy L. Bliss. The assignment could provide a first FM service to Lost Cabin.

DATE: Effective October 14, 1982.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: August 5, 1982.

Released: August 10, 1982.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Lost Cabin, Wyoming), BC Docket No. 82–111 RM–3978 RM–4010.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 47 Fed. Reg. 8797, published March 2, 1982, proposing the assignment of Channel 256 to Lost Cabin, Wyoming, as that community's first FM assignment. The *Notice* was issued in response to separate petitions filed by John S. Tyler ("petitioner") and Roy L. Bliss ("petitioner"). Petitioners filed joint comments in support of the proposal.[1]

2. In their comments, petitioners incorporated by reference the information contained in the *Notice* demonstrating the need for a Class C assignment at Lost Cabin. Both petitioners stated that they will apply for the channel, if assigned.

3. The Commission has determined that the public interest would be served by assigning Channel 256 to Lost Cabin, Wyoming, since it would provide the community with its first local FM broadcast service.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281 and 0.204(b) of the Commission's rules, it is ordered that effective October 14, 1982, § 73.202(b) of the Commission's rules, is amended with respect to the following community:

City	Channel No.
Lost Cabin, Wyoming	256

5. It is further ordered, that this proceeding is terminated.

6. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632–7792.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-22513 Filed 8-17-82; 8:45 am]
BILLING CODE 6712-01-M

[1] Petitioners furnished demographic, economic and population data demonstrating the need for a first broadcast service in Lost Cabin. However, in view of the action taken in the *Second Report and Order* in BC Docket No. 80–130, this information is no longer required.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 2722-137]

Atlantic Sea Scallop Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements the Fishery Management Plan for Atlantic Sea Scallops (*Placopecten magellanicus*) (FMP). This rule is, except for minor revisions, identical to the emergency interim rule which implemented the FMP on May 15, 1982. Revisions have been made to clarify the rule, and to respond to comments received during the public review period. These regulations are intended to allow the fishery for Atlantic sea scallops to attain optimum yield.

EFFECTIVE DATE: August 13, 1982.

ADDRESS: Copies of the FMP, the final Environmental Impact Statement, Regulatory Impact Review, and

Regulatory Flexibility Analysis are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, Massachusetts 01906.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, Scallop Management Coordinator, 617–281–3600.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the New England Fishery Management Council (Council) in consultation with the Mid-Atlantic and South Atlantic Fishery Management Councils. The FMP establishes a management program for Atlantic sea scallops that: (1) Restricts the minimum size-at-harvest as a conservation measure; (2) requires vessels fishing for Atlantic sea scallops to obtain a permit; and (3) utilizes the provisions of the voluntary Three-Tier Fishery Information Collection System (Three-Tier System) to obtain information for management of the fishery. The FMP also provides that the Regional Director may, based on established criteria, alter the minimum size-at-harvest within the range from 40 to 25 meats to the pound, by as many as five meats to the pound per alteration. This procedure can only be exercised under limited circumstances and after the public has an opportunity to comment on the Regional Director's recommendation.

The Assistant Administrator for Fisheries approved the FMP on April 26, 1982. An emergency interim rule implemented the FMP for 45 days effective May 15, 1982 (47 FR 20776). The emergency interim rule provided for public review and comment on the FMP and regulations. The comment period ended June 28, 1982. The emergency interim rule was extended for an additional 45 day period through August 12, 1982, (47 FR 28398). The preamble to the emergency interim rule provided a detailed discussion of the management measures imposed by the FMP. That discussion is not repeated here. This final rule is essentially identical to the emergency interim rule, with several minor revisions for clarity and to respond to public comments. The revisions do not represent any significant change in the provisions imposed under the emergency interim rule. The comments received, and NOAA's responses, are discussed below.

Response to Public Comments

Written comments were submitted by the Government of Canada, the New Bedford Seafood Council, the New Bedford Seafood Cooperative Association, the Division of Marine Fisheries of the Commonwealth of Massachusetts, and Mr. Arthur Ochse, a vessel owner. The regulations were discussed at a meeting of the Sea Scallop and Regulatory Measures Oversight Committees of the New England Fishery Management Council.

Comment: The Government of Canada raised two concerns in Diplomatic Note Number 308, dated June 28, 1982. The first concern was that the procedure to adjust the minimum meat count and shell height standards, which may be used after the FMP has been in effect for one year, is overly restrictive and time consuming. It was suggested that time requirements be shortened, and that the limit on adjustment of the meat count should be increased from no more than 5 meats per adjustment to allow for an alteration of up to ten meats per adjustment.

Response: This adjustment procedure was developed after long and careful deliberation by NOAA and the Council, and reflects basic requirements to provide for regulatory adjustment in response to scientific information, and to afford a reasonable opportunity for public review. The procedure and the limit on adjustments to five meats per adjustment is intended to ensure that adjustments are made in a deliberate, responsible, and rational manner to provide continuity in management and ensure that the underlying conservation objectives of the plan can be attained. To shorten the administrative process, or to allow too great a deviation from an established meat count would, in NOAA's opinion, be conducive to less thorough and reasoned decision-making, contrary to the wishes of the Council and the conservation needs of the resource.

Comment: The Canadian Government also suggested that the voluntary reporting system incorporated in the FMP be made mandatory.

Response: Statistical information used for monitoring the scallop fishery is currently collected through a voluntary program that includes reports submitted by fishermen, dealers, and processors, personal interviews conducted by NMFS port agents, and reports from scientific observers on selected vessels. NOAA also conducts annual resource assessment cruises to monitor the status of the resource. NOAA believes that the information collection program, as specified, satisfies the needs of fishery managers to monitor the fishery, and that a mandatory program would not provide better coverage or more reliable information than is presently collected.

Comment: The New Bedford Seafood Council offered three comments on the regulations. The first, which was also offered by the New Bedford Seafood Cooperative, expressed concern that reduction of the meat count standard to 30 meats per pound at the end of one year might lead to economic hardship for the scallop fleet at that time.

Response: The Council thoroughly examined the impact of a 30 meat count regulation when formulating the FMP. The analysis supporting the Council's decision suggests that the meat count reduction should not have major adverse economic effects if undertaken as scheduled. The Council's provision for a one-year delay in implementing the 30 meat count standard was taken to mitigate short term economic hardship. Further delay in reducing the meat count and shell height standard was considered unnecessary and contrary to the conservation needs of the resource. Notwithstanding these considerations, the Regional Director is responsible for monitoring the fishery and has the authority to adjust the meat count standard in response to established criteria if necessary and appropriate. The review and monitoring process is currently in operation and adjustments can be made as the needs of the resource, fishery, and industry indicate.

Comment: Comments from the New Bedford Seafood Council also supported enforcement of the possession prohibition on nonconforming sea scallops regardless of their origin.

Response: NOAA believes that the present regulatory structure, including the possession prohibition, with a procedure for the certification of sea scallops, adequately provides for effective enforcement of the regulations and attainment of the conservation objectives of the FMP.

Comment: The final comment of the New Bedford Seafood Council recommended further study of the effects on recruitment to the stocks and fishery of that sector of the industry that lands scallops in the shell.

Response: Such a study can and will be accomplished as part of the Council's responsibility to monitor and amend the FMP as necessary.

Comment: The Commonwealth of Massachusetts suggested an alternative to the sampling procedure and criterion used to determine compliance with the meat count standard. The suggested alternative would substantially relax the present sampling criterion which establishes a violation if three or more of ten samples exceed the meat count standard.

Response: NOAA believes that the current sampling criterion, in combination with the normal and appropriate discretion of enforcement

officers, is adequate and appropriate to implement the conservation objectives of the FMP. Alterations in the sampling procedure, if necessary, can be made at a later date through regulatory amendment.

Comment: Mr. Arthur Ochse commented in general support of the regulations, but suggested that the meat count standard remain at 40 meats per pound from August through January each year because of the condition of the scallops during these months.

Response: The meat count standard will be 40 meats per pound through May 15, 1983. No basis or rationale exists within the FMP at this time to support seasonal alteration of the meat count standard thereafter.

Comment: A review by the National Marine Fisheries Service (NMFS), and comments from the Council's Oversight Committees have resulted in several changes in the regulatory text to improve clarity. Paragraph (c) of the definition for *First transaction in the United States* is clarified, while the definition for *Recreational fishing* is deleted because it is not referred to in the rest of the regulations. Also, the following texts have been clarified: §§ 650.4(i), 650.6(b), 650.7(b), 650.20(a), and 650.22. In addition, § 650.7(k), which was reserved in the interim rule, is deleted from this final rule and subsequent prohibitions are reordered consecutively. Provisions for facilitation of enforcement in § 650.8(b) and (c) are revised for consistency with recent U.S. Coast Guard requirements for boarding vessels. The only substantive change in this final rule is to raise the allowable harvest of sea scallop meats per trip for vessels without permits from 5 bushels or 25 pounds per trip, to 5 bushels or 40 pounds per trip. This change has been made to § 650.4(a) because the yield of meats from 5 bushels of scallops is generally closer to 40 pounds than to 25 pounds. Scallops are generally landed in bags containing 40 pounds of meats.

Classification

A Regulatory Impact Review prepared by the Council supported a determination by NOAA's Administrator that these regulations do not constitute a major rule under Executive Order 12291.

The Administrator has determined, based on the Regulatory Flexibility Analysis, that these regulations will have a significant economic impact on a substantial number of small entities.

These regulations were reviewed by the Office of Management and Budget as an emergency interim rule on May 14, 1982 (47 FR 20776), and were subsequently implemented for two consecutive 45-day periods. This final rule implements the FMP and regulations permanently, unless otherwise amended.

A draft Environmental Impact Statement was prepared in accordance with the National Environmental Policy Act and was filed with the Environmental Protection Agency (EPA) and made available to the public from April 3, 1982, through May 17, 1982. Eight public hearings were conducted from Maine to North Carolina. A final Environmental Impact Statement (FEIS) was filed with EPA on May 7, 1982. Copies of the FEIS can be obtained from the New England Fishery Management Council at the address above.

The Assistant Administrator for Fisheries, NOAA, finds that good cause exists to waive the 30-day delayed effectiveness period prescribed by the Administrative Procedure Act. To postpone the effective date of the final regulations until the delayed effectiveness period expired would expose the resource to harvest without regulation. For these reasons the Assistant Administrator has found that it would be contrary to the public interest to delay implementation of these regulations.

Except for applications for permits, the collection of information, as defined by the Paperwork Reduction Act, is not increased at this time for individuals or any level of business. Information collection required for the vessel permit application was considered and is approved under OMB 0648–0097. Information collection associated with use of the voluntary Three-Tier System will utilize NOAA form 88–30, which is approved under OMB 0648–0013. Section 650.5, *Recordkeeping and Reporting Requirements*, has been reserved pending full implementation of the Three-Tier System to be utilized under this FMP.

The entire text of the regulations, as revised for clarity and to respond to comments received, is being republished here as a convenient reference for the affected public.

List of Subjects in 50 CFR Part 650

Fish; Fisheries.

Dated: August 13, 1983.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, Part 650 of Title 50 of the Code of Federal Regulations is revised as set forth below:

PART 650—ATLANTIC SEA SCALLOP FISHERY

Subpart A—General Provisions

Sec.

Subpart B—Management Measures

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

Subpart A—General Provisions

§ 650.1 Purpose and scope.

The purpose of this part is to implement the Fishery Management Plan for Atlantic Sea Scallops, prepared and adopted by the New England Fishery Management Council in consultation with the Mid-Atlantic and South Atlantic Fishery Management Councils, and approved by the Assistant Administrator for Fisheries (NOAA). These regulations govern fishing for Atlantic sea scallops within that portion of the Atlantic Ocean over which the United States exercises fishery management authority.

§ 650.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Area of custody means any vessel, building, vehicle, pier, or dock facility where Atlantic sea scallops may be found.

Atlantic sea scallop or *scallop* means the species *Placopecten magellanicus* throughout its range.

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State Agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the

direction of any person described in paragraph (a) of this definition.

Catch, take, or harvest includes, but is not limited to, any activity which results in killing any fish, or bringing any live fish on board a vessel.

Council means the New England, Fishery Management Council.

First transaction in the United States means the time and place at which Atlantic sea scallops.

(a) After being landed in the United States in the shell, are shucked;

(b) After being landed in the United States shucked, are mixed, sorted, or processed in any way; or

(c) Are certified, through a procedure specified by the Regional Director, to have been taken under a management system which the Regional Director finds to be substantially consistent with the conservation objectives of the FMP and these regulations.

Fish includes Atlantic sea scallops (*Placopecten magellanicus*).

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line each point of which is 200 nautical miles from the baseline from which the territorial sea is measured.

Fishery Management Plan (FMP) means the Fishery Management Plan for Atlantic Sea Scallops and any amendments thereto.

Fishing, or *to fish*, means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship or other craft which is used for, equipped to be used for, or of a type which is normally used for: (a) Fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to preparation, supply, storage, refrigeration, transportation, or processing.

Land means to begin offloading fish, to offload fish, or to arrive in port with the intention of offloading fish.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Meat means the retained part of the scallop adductor muscle.

Meat count means the number of scallop meats required to make one pound of meats. A meat count of thirty means that one pound of scallops contains thirty meats. As the average scallop size increases, the meat count declines.

Non-conforming Atlantic sea scallops means scallops which do not meet the standards specified in § 650.20 of these regulations, *unless* such scallops have been certified, through a procedure specified by the Regional Director, to have been taken under a management system which the Regional Director finds to be substantially consistent with the conservation objectives of the FMP and these regulations.

Official number means the documentation number issued by the U.S. Coast Guard or the certificate number issued by a State or the Coast Guard for undocumented vessels in accordance with the Federal Boating Safety Act of 1971 or the Vessel Documentation Act (46 U.S.C. 65).

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person in paragraphs (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, NOAA, or a designee.

Shell height is a straight line measurement from the umbo on the hinge, or anterior wing of the shell, to the outermost part of the curve of the leading edge.

Shucking or *to shuck* means opening scallops and separating the meat from the shell.

Trip is the period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel begins to offload fish in port.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated under the Magnuson Act.

Vessel of the United States means:

(a) Any vessel documented or numbered by the U.S. Coast Guard under U.S. law; or

(b) Any vessel under five net tons, which is registered under the laws of any State.

§ 650.3 Relation to other laws.

All fishing activity, regardless of species sought, is prohibited under 15 CFR Part 924, in the U.S.S. Monitor Marine Sanctuary, which is located approximately 15 miles southwest of Cape Hatteras off the coast of North Carolina.

§ 650.4 Vessel permits.

(a) *General.* Any vessel of the United States harvesting Atlantic sea scallops in quantities greater than 5 bushels in the shell or 40 pounds of meats per trip shall have a permit required by this Part on board the vessel.

(b) *Application.* An application for a fishing vessel permit under this section shall be submitted and signed by the vessel owner on an appropriate form which may be obtained from the Regional Director. The application shall be submitted to the Regional Director and shall contain the following information:

(1) The name, mailing address, and telephone number of the applicant and the vessel's master;

(2) The name of the vessel;

(3) The vessel's official number;

(4) The home port, gross tonnage, and net tonnage of the vessel;

(5) The engine horsepower of the vessel;

(6) The approximate fish-hold capacity of the vessel in pounds of meats or unshucked scallops as appropriate;

(7) The type, quantity and size of fishing gear used by the vessel, including a statement as to whether all scallops harvested will be shucked at sea, or a portion of the catch will be landed in the shell; and

(8) The size of the crew, which may be stated in terms of a range.

(c) *Issuance.* (1) Upon receipt of a completed application, the Regional

Director must issue a permit within 30 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within ten days following the date of notification, the application must be considered abandoned.

(d) *Expiration.* A permit expires when the owner or name of the vessel changes.

(e) *Duration.* a permit is valid until it expires or is revoked, suspended, or modified under 50 CFR Part 621.

(f) *Alteration.* Any permit which has been altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(h) *Transfer.* Permits issued under this Part are not transferable or assignable. A permit is valid only for the vessel for which it is issued.

(i) *Display.* Any permit issued under this Part must be carried on board the fishing vessel at all times. The permit must be prominently displayed in the pilot house or offered for inspection upon request of any Authorized Officer.

(j) *Sanctions.* Subpart D of 50 CFR Part 621 governs the imposition of sanctions against a permit issued under this Part. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the vessel for which the permit is issued is used in the commission of an offense prohibited by the Magnuson Act or by this Part; or if a civil penalty or criminal penalty imposed under the Magnuson Act has not been paid.

(k) *Fees.* No fee is required for any permit under this Part.

(l) *Change in application information.* Any change in the information specified in paragraph (b) of this section, such as the vessel owner or gear configuation, must be reported to the Regional Director within 15 days of the change.

§ 650.5 Recordkeeping and reporting requirements. [Reserved]

§ 650.6 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this Part over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from above.

(b) *Numerals.* The official number must be permanently affixed to each vessel subject to this part. Numbers must contrast with the background and be in block Arabic numerals at least 18 inches in height for vessels over 65 feet, and at least 10 inches in height for all other vessels over 25 feet in length. The length of a vessel, for purposes of this section, is that length set forth in U.S. Coast Guard or state records.

(c) *Duties of operator.* The operator of each vessel subject to this part shall:

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

§ 650.7 Prohibitions.

It is unlawful for any person:

(a) To possess, at or prior to the first transaction in the United States, any non-conforming Atlantic sea scallops. All Atlantic sea scallops will be subject to inspection and enforcement for non-conformity, in accordance with the compliance and sampling procedures specified in § 650.21, up to and including the first transaction in the United States.

(b) To use any vessel for taking, catching, harvesting, or landing any Atlantic sea scallops in excess of the amounts prescribed in § 650.4(a), unless the vessel has a valid permit issued under this part, and the permit is on board the vessel;

(c) To make any false statement in connection with an application under § 650.4, or to fail to report to the Regional Director, within 15 days, any change in the information contained in a permit application for a vessel;

(d) To make any false statement, oral or written, to an Authorized Officer, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any Atlantic sea scallops;

(e) To possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import or export any Atlantic sea scallops taken or retained in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(f) To fail to affix and maintain permanent markings as required by § 650.6;

(g) To refuse to permit an Authorized Officer to board a fishing vessel, or to enter an area of custody, subject to such person's control, for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit under the Magnuson Act;

(h) To forcibly assault, resist, oppose, impede, intimidate, threaten or interfere with any Authorized Officer in the conduct of any search or inspection described in paragraph (g) of this section;

(i) To resist a lawful arrest for any act prohibited by this part;

(j) To interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, with the knowledge that such other person has committed any act prohibited by this part;

(k) To interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this part;

(l) To fail to comply immediately with enforcement and boarding procedures specified in § 650.8;

(m) To transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested fish to any foreign fishing vessel within the FCZ unless the foreign vessel has been issued a permit which authorizes the receipt by such vessel of U.S.-harvested fish of the species concerned;

(n) To violate any other provisions of this part, the Magnuson Act, or any other regulation promulgated under the Magnuson Act.

§ 650.8 Enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to this Part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Signals.* Upon being approached by a U.S. Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Magnuson Act, the operator of a fishing vessel shall be alert for signals conveying enforcement instructions. The VHF–FM radiotelephone is the normal method of communicating between vessels. However, visual methods or loudhailer may also be used. The following signals extracted from the U.S. Hydrographic Office Publication, H.O. 102 International Code of Signals may be communicated by flashing light or signal flags:

(1) "L" means "You should stop your vessel instantly,"

(2) "SQ3" means "You should stop or heave to; I am going to board you," and

(3) "AA AA AA etc.," is the call to an unknown station, to which the signaled vessel must respond by illuminating the vessel identification required by 650.6(a).

(4) "RY–CY" means "You should proceed at low speed. A boat is coming to you."

(c) *Boarding.* The operator of a vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way so as to permit the Authorized Officer and the boarding party to come aboard;

(2) Provide a ladder, illumination, and a safety line when necessary or requested by the Authorized Officer to facilitate boarding and inspection.

(3) Take such actions as the Authorized Officer deems necessary to ensure the safety of the Authorized Officer and the boarding party and to facilitate the boarding.

§ 650.9 Penalties.

Any person or fishing vessel found to be in violation of this Part will be subject to the civil and criminal penalty provisions and forfeiture provisions of the Magnuson Act, and to 50 CFR Parts 620 (Citations) and 621 (Civil Procedures), and other applicable Federal law.

Subpart B—Management Measures

§ 650.20 Meat count and shell height standards.

(a) From May 15, 1982, through May 15, 1983, the meat count for shucked Atlantic sea scallops shall not exceed 40 meats per pound; the corresponding minimum shell height is 3¼ inches (83 mm). Thereafter, except as provided in paragraph (b) of this section, the meat count for shucked Atlantic sea scallops shall not exceed 30 meats per pound; the corresponding minimum shell height is 3½ inches (89 mm).

(b) The Regional Director may temporarily adjust the meat count and shell height standards in accordance with the procedures and criteria provided in § 650.22

§ 650.21 Compliance and sampling procedures.

Compliance with the specified meat count and shell height standards will be determined by inspection and enforcement up to and including the first transaction in the United States as follows:

(a) *Shucked meats.* The Authorized Officer shall take one-pound samples at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as ten one-pound samples be examined as a sample group. A sample group fails to comply with the standard if the number of meats in each of any three one-pound samples exceeds the standard, or if the averaged meat count for the entire sample group exceeds the standard. The total amount of scallops in possession will be presumed in violation of this regulation and subject to forfeiture if the sample group fails to comply with the standard.

(b) *Scallops in the shell.* The Authorized Officer shall take samples of forty scallops each at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as ten samples (400 scallops) be examined as a sample group. A sample group fails to comply with the standard if more than ten percent of the number of scallops in the sample group are less than the shell height specified by the standard. The total amount of scallops in possession will be presumed in violation of this regulation and subject to forfeiture if the sample group fails to comply with the standard.

§ 650.22 Review of resource status; temporary adjustment of standards.

(a) *Review of resource status.* The Regional Director shall review the status of the Atlantic sea scallop resource on a continuing basis, and shall, at least annually, prepare a report concerning the status of the fishery and possible changes in the resource, fishery, or industry which might require adjustment of the management program, or amendment of the FMP. The Council may, at any time, request that such a report be prepared within sixty days.

(b) *Temporary adjustment of standards.* (1) After May 15, 1983, the Regional Director may recommend that the standards contained in § 650.20 be adjusted, if he makes the finding required by paragraph (c) of this section after considering the information specified in paragraph (d) of this section.

(2) The standards can be adjusted only within a range from 25 to 40 meats per pound, (with appropriate and consistent shell height adjustment) and may be adjusted by no more than 5 meats per pound by any one adjustment.

(3) The Regional Director shall solicit and consider any recommendation of the Council regarding adjustment of standards, and, with the Council, will provide for public notice and comment, and hold a public hearing on the recommendation in conjunction with the Council meeting at which the recommendation is discussed.

(4) The Regional Director may modify his recommendation on the basis of comments from the Council or the public. After consideration of the full record the Regional Director may adjust the standards contained in § 650.20, and shall publish in the **Federal Register** notice of such change and the date when the adjusted standard will revert to a 30 meat count. Notice of any such adjustment will be mailed to each holder of a permit issued under § 650.4.

(5) Adjustments of the meat count and shell height standards may remain in effect for up to twelve months. No later than twelve months after the implementation of the most recent adjustment to the meat count and shell height standards, the Regional Director must review such adjustments. The Regional Director may renew the adjustment upon making a finding consistent with § 650.22 (c).

(c) *Criteria.* The Regional Director may adjust the standards specified in § 650.20 if he finds that:

(1) The objective of the FMP would be achieved more readily, would be better served through an adjustment of the prevailing standards;

(2) The recommended alteration in the standards would not reduce expected catch over the following year by more than 5% from that which would have been expected under the prevailing standard;

(3) The recommended standards for meat count and shell height are consistent with each other; and

(4) Inconsistencies exist in the management measures applied to sea scallop stocks in areas harvested by both domestic and foreign fishermen, and those inconsistencies provide foreign fishermen with an advantage over domestic fishermen which can be demonstrated to adversely affect the domestic fishery; or analysis of the size distribution of sea scallops shows that more than 50% of the harvestable sea scallop biomass is at sizes smaller than those consistent with the prevailing standards and that a temporary relaxation of the standards would not jeopardize future recruitment to the fishery.

(d) *Sources of information.* The Regional Director shall consider all available resource and assessment information, especially the most recently completed survey and assessment, when preparing any report or recommendation under this section. The Regional Director shall also consider: Reports and records maintained by fishermen and made available as a part of the fishery statistics program; other fishery statistics; and any other available information which increases understanding of prevailing conditions of the stock, the fishery, and the industry.

[FR Doc. 82–22533 Filed 8–13–82; 4:40 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 47, No. 160
Wednesday, August 18, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Applicability of License Conditions and Technical Specifications in an Emergency

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing a change to its regulations which would clarify that all Part 50 licensees may take reasonable action that departs from a license condition or technical specification in an emergency when such action is immediately needed to protect the public health and safety.

This rule is being proposed because NCR regulations currently do not permit deviations from license conditions or technical specifications under any conditions. Emergency situations can arise, though, during which a license condition or a technical specification could prevent necessary protective action by the licensee. The proposed rule would allow such action to be taken in emergency circumstances.

DATE: Comments must be submitted in writing on or before October 18, 1982. Comments received after this date will be considered if it is practical to do so, but assurances of consideration cannot be given except as to comments filed on or before this date.

ADDRESSES: Interested persons are invited to submit written comments and suggestions on the proposed rule change to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of the comments received by the Commission may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Charles M. Trammell, III, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (telephone: 301–492–7389).

SUPPLEMENTARY INFORMATION: The proposed change would clarify the regulations in 10 CFR Part 50 by providing that a licenses may take reasonable action that departs from a license condition or a technical specification in an emergency when such action is immediately needed to protect the public health and safety.

At present, NRC regulations do not permit deviations from license conditions or technical specifications under any circumstances. Emergencies can arise, though, during which compliance with a license condition or a technical specification could prevent necessary action by a licensee to protect the public health and safety. Licensees are understandably reluctant to take actions contrary to their licenses. Absolute compliance with the license in emergencies can be a barrier to effective protective action by a licensee.

Technical specifications contain a wide range of operating limitations and requirements concerning actions to be taken if certain systems fail and if certain parameters are exceeded. The bulk of technical specifications are devoted to keeping the plant parameters within safe bounds and keeping safety equipment operable during normal operation. However, technical specifications also require the implementation of a wide range of operating procedures which go into great detail as to actions to be taken in the course of operation to maintain facility safety. These procedures are based on the various conditions—normal, transient and accident conditions—analyzed as part of the licensing process. Nevertheless, unanticipated circumstances can occur during the course of emergencies. These circumstances may call for responses different from any considered during the course of licensing—e.g., the need to isolate the accumulators to prevent nitrogen injection to the core while there was still substantial pressure in the primary system was unforseen in the licensing process before TMI–2; thus, the technical specifications prohibited this action. Special circumstances requiring a deviation from license requirements are not necessarily limited to transients or accidents not analyzed in the licensing process. Special circumstances can arise during emergencies involving multiple equipment failures or coincident accidents where plant emergency procedures could be in conflict, or not applicable to the circumstances. In addition, an accident can take a course different from that visualized when the emergency procedure was written, thus requiring a protective response at variance with a procedure required to be followed by the licensee. Also, performance of routine surveillance testing, which might fall due during an emergency, could either divert the attention of the operating crew from the emergency or cause the loss of use of equipment needed for proper protective action.

Technical specifications or license conditions can be amended by NRC, and the proposed rule is not intended to apply in circumstances where time allows this process to be followed. The proposed rule would apply only to those emergency situations where action by the licensee is required immediately to protect the public health and safety—action which may be contrary to a technical specification or a license condition.

It is the intent of the proposed rule to allow deviations from license requirements only in the special circumstances described. It is not intended that licensees be allowed to deviate from procedures and other license requirements where these are applicable.

For these reasons, the Commission believes that there should be a specific provision in the Commission's rules clearly indicating that a licensee may take reasonable action that departs from a license condition or technical specification in an emergency when such action is immediately needed to protect the public health and safety.

In view of the fact that the rule permits a licensee to depart from NRC's requirements, the Commission expects that, if adopted, it would be applied rarely and only under the special circumstances described. The NRC would review carefully any licensee's use of the rule to determine whether the licensee had to act immediately in an emergency to avert possible adverse consequences to the public health and safety and may require written statements from a licensee concerning its actions after use of the provisions of this rule. The Commission recognizes

that a licensee would need to exercise judgment in applying the rule and that, in its after-the-fact review, it may not agree in every instance with the licensee's actions. However, enforcement action for a violation of the rule would not be taken unless a licensee's action was unreasonable considering all the relevant circumstances having to do with the emergency.

The proposed rule also would require a licensee, under § 50.72, to notify the NRC Operations Center by telephone of emergency circumstances requiring it to take any protective action that departs from a license condition or a technical specification. When time permits, the notification would be made before the protective action is taken; otherwise, it would be made as soon as possible thereafter. The impact of this reporting requirement on licensees would be negligible.

The proposed rule follows the recommendation in NUREG–0616, "Report of Special Review Group, Office of Inspection and Enforcement on Lessons Learned from Three Mile Island"[1] that NRC establish and announce a firm policy regarding the applicability of the license under emergency circumstances, with certain exceptions discussed below.

(a) The proposed rule does not require that departure from a license condition or technical specification have the concurrence of the most senior licensee and NRC personnel available at the time before the departure. While the Commission does not disagree with the general concept that the most senior licensee personnel available at the time should be involved, the proposed rule specifies only that a licensed operator should obtain the concurrence of a licensed senior operator and does not go into further detail as to which additional persons should be involved if time permits or which persons should be involved under other circumstances. The persons responsible for safe operation of the facility are already identified in the facility license and implementing procedures. Adding this requirement to the proposed rule itself is therefore believed to be unnecessary.

[1] NUREG–0616 is available for inspection and copying for a fee at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. Copies may be purchased through the NRC/GPO Sales Program by using a GPO Deposit Account, MasterCard or Visa by calling the NRC/GPO Sales Office on (301) 492–9530 or by sending a check or money order payable to Superintendent of Documents to: Sales Manager 058, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Purchase orders are acceptable from Federal, state, and local government offices only.

(b) The proposed rule does not require the concurrence of NRC personnel. Receiving the "concurrence" or "approval" of NRC personnel would amount to a license amendment using procedures contrary to those existing for amendments. The rule specifically applies to emergency situations where immediate action is needed and time is not available for a license amendment. Requiring the concurrence of NRC personnel available at the time tends to shift the burden of safety from the licensee to NRC—contrary to the proposed rule's intent. It could also shift the burden to NRC personnel on site who may be unqualified to concur in a proposed licensee action.

The Commission believes that the proposed rule on the applicability of license conditions and technical specifications in emergencies should be implemented by adding the necessary clarification to § 50.54, "Conditions of licenses" and to § 50.72, "Notification of significant events." The proposed rule would apply to all facilities licensed pursuant to Part 50.

The proposed rule does not provide significant guidance to Part 50 licensees for identifying those situations in which deviations from license conditions or technical specifications are allowable. In addition, the proposed rule and the supplementary information does not contain standards to be used by the NRC staff in determining whether to take enforcement action against Part 50 licensees who deviate from license conditions or technical specifications in these types of situations. The Commission particularly solicits comments on these two areas.

Additional Comments of Commissioner Gilinsky

I believe the decision to operate outside the Technical Specifications should be made by a senior reactor operator since I understand that reactor operators are not trained or tested on both the basis and importance of the Technical Specifications. I would be interested in receiving comments on this issue.

Paperwork Reduction Act Statement

Pursuant to the Paperwork Reduction Act of 1980 (Pub. L. 96–511), this proposed rule has been submitted to the Office of Management and Budget for clearance of the information collection requirements.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities. These proposed regulations affect licensees that own and operate nuclear utilization facilities licensed under sections 103 and 104 of the Atomic Energy Act of 1954, as amended. The amendment serves to clarify the applicability of license conditions and technical specifications in an emergency. The clarification would be incorporated as a condition of the respective operating licenses, and would require no action on the part of licensees. Accordingly, there is no new, significant economic impact on these licensees; nor do these licensees fall within the definition of small businesses set forth in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR Part 121.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, and Reporting requirements.

For the reasons set out in the preamble and pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendment to 10 CFR Part 50 is contemplated.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and

50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. New paragraphs (y) and (z) are added to § 50.54 to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(y) A licensee may take reasonable action that departs from a license condition or a technical specification (contained in a license issued under this part) in an emergency when such action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.

(z) A licensed operator taking action permitted by paragraph (y) of this section shall, as a minimum, obtain the concurrence of a licensed senior operator prior to taking such action.

3. A new paragraph (c) is added to § 50.72 to read as follows:

§ 50.72 Notification of significant events.

* * * * *

(c) Each licensee licensed under § 50.21 or § 50.22 shall notify the NRC Operations Center by telephone of emergency circumstances requiring it to take any protective action that departs from a license condition or a technical specification, as permitted by § 50.54(y). When time permits, the notification shall be made before the protective action is taken; otherwise, notification shall be made as soon as possible thereafter. The Commission may require written statements from a licensee concerning its actions after use of this provision of the rule.

Dated at Washington, D.C. this 12th day of August, 1982.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-22560 Filed 8-17-82; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Cancellation of Public Hearing on Modified Portions of the Utah Permanent Regulatory Program

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

ACTION: Cancellation of public hearing.

SUMMARY: OSM is announcing the cancellation of a public hearing on the adequacy of modifications to the Utah permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 submitted to OSM by the State for the Director's approval.

This notice cancels the public hearing but does not alter the time and location at which the Utah program and proposed amendments are available for public inspection, or the comment period during which interested persons may submit written comments on the proposed program elements. Because no one expressed an interest in attending the hearing, the hearing has been cancelled.

DATE: The following hearing is cancelled: The public hearing on the proposed modifications to the Utah program, August 16, 1982.

ADDRESSES: Written comments should be mailed or hand-delivered to: Office of Surface Mining Reclamation and Enforcement, New Mexico Field Office, 219 Central Ave., NW., Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagen, Director, New Mexico Field Office, Office of Surface Mining, 219 Central Ave., NW., Albuquerque, New Mexico 87102.

SUPPLEMENTARY INFORMATION: On July 26, 1982, notice of opportunity for public hearing on the proposed modifications to the Utah program was published in the **Federal Register** (46 FR 32173–74). The proposed modifications were submitted to OSM by Utah for the Director's approval.

The notice stated that any person interested in making an oral or written presentation should contact Mr. Robert Hagen by August 6, 1982, and that if no person contacted Mr. Hagen to express an interest in participating in the hearing by the above date, the hearing would be cancelled.

Because no one expressed an interest in attending the hearing by August 6, 1982, the hearing has been cancelled.

While there is no public hearing, interested persons may still submit written comments on the proposed program elements. Written comments must be received on or before 4:00 p.m. on August 20, 1982, to be considered in the Secretary's decision on whether the proposed modifications meet the standards for approval of State program amendments at 30 CFR Part 732.

Written comments should be mailed or hand-delivered to: Mr. Robert Hagen, Director, New Mexico Field Office, Office of Surface Mining Reclamation and Enforcement at the address listed above.

Dated: August 12, 1982.

Wm. B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 82-22589 Filed 8-17-82; 8:45 am]

BILLING CODE 4310-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82-555; RM-4156]

FM Broadcast Station in Delta Junction, Alaska; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign FM Channel 228A to Delta Junction, Alaska, in response to a petition filed by Delta Broadcasters. The proposal could provide a first FM service to that community.

DATES: Comments must be filed on or before September 24, 1982, and reply comments on or before October 14, 1982.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcast.

Adopted: August 5, 1982.

Released: August 11, 1982.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Delta Junction, Alaska), BC Docket No. 82-555, RM-4156.

1. A petition for rule making was filed June 30, 1982, by Delta Broadcasters ("petitioner") proposing the assignment of FM Channel 228A to Delta Junction, Alaska, as its first FM assignment. Petitioner states that it will apply for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements.

2. Since the proposed assignment of Channel 228A to Delta Junction, Alaska, is within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence must be obtained.

3. In view of the fact that the proposed channel assignment could provide a first FM broadcast service to Delta Junction, Alaska, the Commission believes it appropriate to propose amending the FM

Table of Assignments, § 73.202(b) of the Commission's rules, with respect to the following community:

City	Channel	
	Present	Proposed
Delta Junction, Alaska		228A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before September 24, 1982, and reply comments on or before October 14, 1982, and are advised to read the Appendix for the proper procedures.

6. The Commission has determined that the relevant provisions of the Regulatory Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-22512 Filed 8-17-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-554; RM-4155]

FM Broadcast Station in Redfield, South Dakota; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: Action taken herein proposes the assignment of Channel 279 to Redfield, South Dakota, in response to a petition filed by Victoria Broadcasting System, Inc. The proposed assignment could provide a first local FM broadcasting service to Redfield.

DATES: Comments must be filed on or before September 24, 1982, and reply comments on or before October 14, 1982.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: August 5, 1982.

Released: August 11, 1982.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Redfield, South Dakota, BC Docket No. 82-554, RM-4155.

1. Victoria Broadcasting System, Inc. ("petitioner") has filed a petition for rule making proposing the assignment of Class C FM Channel 266 to Redfield, South Dakota, as its first FM assignment. Petitioner's proposal is in conflict with the proposed assignment of Channel 266 to Luverne, Minnesota (BC Docket No. 82–418, RM–4123). A study indicates that Class C FM Channel 279 is alternately available to Redfield.

2. Redfield, South Dakota, at present has no local FM broadcast service and is served by daytime-only AM Station KQKD, licensed to petitioner. Petitioner has submitted information with respect to Redfield as to its need for a first FM channel assignment and indicated its intention to apply for the channel, if assigned.

3. Channel 279 is available to Redfield and meets the mileage separation requirements of the Commission's Rules.

4. In view of the fact that the proposed assignement could provide a first local FM broadcasting service to Redfield, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the rules, with respect to Redfield, South Dakota, as follows:

City	Channel No.	
	Present	Proposed
Redfield, South Dakota		279

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before Sept. 24, 1982, and reply comments on or before October 14, 1982, and are advised to read the Appendix for the proper procedures.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules,* 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contract D. David Weston, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advance in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel that was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §1.420(a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by intersted parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 82–22511 Filed 8–17–82; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

Snapper-Grouper Complex; Public Hearings

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Public Hearings.

SUMMARY: The South Atlantic Fishery Management Council will hold public hearings for the purpose of public input on the Draft Environmental Impact Statement/Draft Fishery Management Plan (DEIS/FMP) for the Snapper-Grouper Complex.

DATES: Written comments on the plan from members of the public may be submitted no later than October 5, 1982.

Individuals or organizations wishing to comment on the DEIS/FMP may do so at public hearings to be held as follows:

August 31: Cocoa, Florida, Key West, Florida
September 1: Jacksonville Beach, Florida, Miami, Florida
September 2: Savannah, Georgia, Palm Beach Gardens, Florida
September 7: Morehead City (Atlantic Beach), North Carolina, Charleston, South Carolina
September 8: Wilmington, North Carolina
September 9: Surfside Beach (Murells Inlet), South Carolina

All of the hearings will be from 7:00–10:00 p.m.

Hearings will be tape recorded and tapes will be filed as an official transcript of the proceedings. A written summary will be prepared.

ADDRESS: Send comments to: David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, SC 29407.

Hearing Locations

August 31, 1982—Holiday Inn, 900 Friday Road (I–95 & S.R. 524), Cocoa, Florida
August 31, 1982—Holiday Inn, 111 N. Roosevelt Boulevard, Key West, Florida
September 1, 1982—Sheraton Beach Resort, Eleventh Avenue South, Jacksonville Beach, Florida
September 1, 1982—Rosenstiel Marine School Auditorium 4600 Rickenbacker Causeway, Miami, Florida
September 2, 1982—Savannah Science Musuem, 4405 Paulsen Street, Savannah, Georgia
September 2, 1982—Northeast County Courthouse Complex, 3188 PGA Boulevard, Palm Beach Gardens, Florida
September 7, 1982—Marine Resource Center Auditorium, P.O. Box 580, Morehead City (Atlantic Beach), North Carolina
September 7, 1982—S.C. Wildlife & Marine Resource Auditorium, Fort Johnson Road, Charleston, South Carolina
September 8, 1982—University of North Carolina, 601 South College Road, Wilmington, North Carolina
September 9, 1982—Holiday Inn, Ocean Boulevard & 17th Avenue, North, Surfside Beach, South Carolina (Murells Inlet)

FOR FURTHER INFORMATION CONTACT: David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston South Carolina 29407, (803) 571–4366. Copies of the DEIS/FMP are available upon request to the South Atlantic Council.

SUPPLEMENTARY INFORMATION: The hearings will deal with a proposal to implement an FMP which establishes a management regime for snappers, groupers and related demersal species of the continental shelf off the southeastern U.S. in the fishery conservation zone under the area of authority of the South Atlantic Fishery Management Council. This area of authority extends from the North Carolina/Virginia border through the Atlantic side of the Florida Keys to 83° W longitude. In the case of the sea basses, however, the management regime only applies south of Cape Hatteras, North Carolina.

Plan objectives and management measures are directed toward alleviating the following problems and issues:

Problems

1. Nine species in the complex are in a documented state of growth overfishing; there is justification to impose minimum size limits on five of these species.

2. Most of the groupers south of Cape Canaveral will likely experience growth overfishing in the near future.

3. Data necessary to document quantitatively growth overfishing or recruitment overfishing are very limited.

Issues

1. Competition exists among domestic fishermen employing different gear.

2. Degradation of habitat by mobile fishing gear or by other means has the potential of reducing the availability of fish.

The objectives of the Plan are:

1. Prevent recruitment overfishing in all species and prevent growth overfishing of each species except where growth overfishing is justified by social and economic considerations.

2. Collect the necessary data to monitor the fisheries.

Optimum yield is the yield that results from the management measures in this plan.

The Council proposes the following management measures for domestic fishermen:

1. A twelve inch minimum size for vermilion snapper accomplished by a four inch trawl mesh size;

2. A twelve inch minimum size for red snapper;

3. An eight inch minimum size for black sea bass;

4. A twelve inch minimum size for red grouper;

5. A twelve inch minimum size for Nassau grouper;

6. The use of fish traps is prohibited shoreward of the 100 ft contour, south of Jupiter Inlet Light;

7. Pulling fish traps is prohibited between the period one hour after sunset and one hour before sunrise south of Cape Canaveral;

8. Fish traps shall have a degradable panel at least as large as the entry ports or degradable door fasteners;

9. Fish traps shall have mesh size no smaller than 1x2 inches or 1.5 inch hexagonal one year after implementation of this plan;

10. An individual shall not fish traps other than his own without the written authorization of the owner;

11. Traps and trap buoys shall be identified with the boat or vessel fishing the traps;

12. The use of poisons, explosives, and powerheads for taking fishes of the snapper-grouper complex is prohibited throughout the management area; and

13. Statistical reporting—Data will be collected from a sample of commercial and recreational landings to be used in future yield-per-recruit analyses.

List of Subjects in 50 CFR Part 646

Fish, Fisheries, Fishery.

(16 U.S.C. 1801, et seq.)

Dated: August 12, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-22479 Filed 8-17-82; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 47, No. 160
Wednesday, August 18, 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

Commodity Credit Corporation

1982 Cotton Loan Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Determination of the 1982-Crop Cotton Loan Program Differentials.

SUMMARY: This notice of determination sets forth the basis for location differentials used in determining base loan rates by warehouse location for upland cotton, loan rates by location for extra long staple (ELS) cotton, premiums and discounts for upland cotton, and micronaire differentials applicable for all 1982-crop loan cotton. Price support loans will be available to eligible producers on 1982-crop based cotton upon such differentials and rates.

EFFECTIVE DATE: August 18, 1982.

FOR FURTHER INFORMATION CONTACT: Eloise V. Mauck, (202) 447–7936. The Final Regulatory Impact Statement describing the options considered in developing these determinations is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice of determination has been reviewed in accordance with the provisions of Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified "not major." These determinations will not result in (1) an annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This notice will not have a major impact specifically on area and community development. Therefore, review as established by Office of Management and Budget Circular A–95 was not used to assure that units of local government are informed of this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since Commodity Credit Corporation 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 title and number of the federal assistance program that this notice applies to are: Title—Commodity Loans and Purchases; Number 10.051; as found in the Catalog of Federal Domestic Assistance.

The determinations of price support loan differentials with respect to the 1982 crops of upland and ELS cotton are made pursuant to the Agricultural Act of 1949, as amended (7 U.S.C. 1421), (hereinafter referred to as the "Act").

On January 29, 1982, the Secretary announced by press release that the base loan rate for 1982-crop upland cotton was 57–08 cents per pound, basis Strict Low Middling 1 1/16-inches, micronaire 3.5–4.9, net weight, at average location in the U.S. and that the national average loan rate for ELS cotton was 99.89 cents per pound. The determinations included in this notice will apply to these loan rates, as applicable.

A description of the applicable statutory authority requiring the determinations set forth in this notice, as well as the pertinent data considered in making these determinations, are set forth below.

Section 403 of the Act was amended by Section 507 of the Agriculture and Food Act of 1981 (Pub. L. 97–98, 95 Stat. 1241, approved December 22, 1981) with respect to upland cotton loan differentials. Section 403 of the Act provides, in part, that appropriate adjustments may be made in the support price for any commodity for differentials in grade, staple, type, quality, location and other factors. Beginning with the 1982 crop of upland cotton, quality differentials (premiums and discounts for grade, staple and micronaire) for the price support loan program for upland cotton shall be established by giving equal weight to (1) loan differentials for the preceding crop and (2) the market differentials for such crop in the nine designated United States spot markets. Also, the Secretary is required to establish a committee to study alternative methods of determining cotton loan program differentials. Prior to announcing the 1982 cotton loan program differentials, the Secretary may review the procedures and criteria, including the recommendations made by the study committee and the formula prescribed by Section 403 of the Act for determining quality differentials. On the basis of such review, the Secretary may revise such procedures and criteria to accurately reflect the actual market value of upland cotton produced in the United States.

In accordance with the requirements of Section 403, the Secretary established a special committee of 10 members to study alternative methods of determining values of premiums and discounts for grade, staple and micronaire for the upland cotton loan program.

The recommendations of the special cotton study committee were as follows:

1. Premiums and discounts for grade and staple of upland cotton should be developed by using a simple average (1:1) of (a) loan differences for the preceding (1981) crop and (b) the simple average of market differences for the seven-month period (August 1981 through February 1982) in the nine designated spot markets.

2. Micronaire discounts for readings outside the 3.5–4.9 range should be developed by using a simple average (1:1) of (a) loan differences for the preceding (1981) crop and (b) the simple average of market differences for the seven-month period (August 1981 through February 1982) in four of the nine designated spot markets. The four markets would be Montgomery, Memphis, Dallas and Lubbock.

The recommendations of the committee are being adopted in this notice of determination.

All nine designated spot markets were used for the determination of differentials for grade and staple of upland cotton because each of those markets quotes differentials for grades and staples actually traded therein relative to the base quality. Consideration was given to using all nine markets for micronaire discounts

for upland cotton. However, the selection was limited to the four markets (Montgomery, Memphis, Dallas and Lubbock) which normally quote micronaire differentials based on actual trading for all grade and staple combinations. Differentials quoted in this context are more likely to reflect actual trading values both for long and short staple cotton.

Micronaire discounts for ELS cotton were determined by using a simple average (1:1) of (a) loan differentials for the preceding (1981) crop and (b) the simple average of market differentials for the seven-month period (August 1981 through February 1982) in the El Paso, Texas, and Phoenix, Arizona, markets—the two major markets for this type cotton.

No other options were considered because the 1:1 weighting should continue to reflect a better balance in the loan schedule for ELS cotton. This method for determining micronaire discounts was adopted because of: (a) the increase in the 1982 average loan rate, (b) the relationship between the higher loan rate and current market prices, and (c) the need to move production into consumption channels, thus minimizing additional acquisitions by CCC.

All three of the methods used in determining quality differentials (discussed above) are based on current market conditions and the preceding crop loan schedules. This approach takes into account changes and trends in market prices reflecting the current and prospective supply-demand situation, At the same time, use of the previous year's loan schedule in the method for determining quality differentials takes into account a longer period and guards against undesirable wide swings applicable to both premiums and discounts.

The freight rates used in developing the base loan rates to reflect location differentials at approved warehouse locations reflect 75 percent of the rates established for 50,000 pound minimum carload lots in all areas except California and Arizona, where the freight rates are based on 62,500 pound minimum carload lots. The use of 75 percent of actual freight rates should prevent the movement of cotton from one location to another simply to obtain greater benefit under the loan program but should not inhibit the movement of cotton to market. Use of full freight rates was rejected because this procedure could result in the possibility of financial gain through the loan program by allowing producers to move cotton away from the producing area in order to obtain higher loan proceeds. Any induced movement could result in additional expense to CCC if the cotton is forfeited to CCC and such cotton is out of position and must be relocated.

Loans rates for the individual eligible qualities of 1982-crop ELS cotton (basis good micronaire) were determined by (1) adjusting the national average loan rate upward to reflect the premium currently considered applicable to good micronaire ELS cotton, (2) weighting average prices (August 1981 through February 1982) for eligible qualities in the El Paso, Texas, and Phoenix, Arizona, markets to the adjusted loan level, using as weights the most recent five-year average production by qualities, and (3) establishing a location differential between the Arizona-California area and the West Texas-New Mexico area to reflect approximate transportation costs between the two areas. No other options were considered because this procedure has been used for many years and has been generally satisfactory.

The selected options also fufill the statutory objective by offering to eligible producers support levels by grade, staple, type, location and other factors which are representative of the differences in market values between these various types and qualities in relation to the base quality for cotton.

The study committee, which was required by statute to be established to study alternative methods for developing upland loan program differentials, met on March 23 and 24, 1982, and again on April 6, 1982. This committee has made its recommendations with respect to cotton loan differentials and such recommendations are hereby adopted.

Determinations

1. *Quality Differentials.*

A. *Premiums and Discounts for Grade and Staple of Upland Cotton.* The 1982-crop loan differentials for grade and staple, determined by using a simple average (1:1) of (a) loan differentials for the preceding (1981) crop and (b) the simple average of market differentials for the seven-month period (August 1981 through February 1982) in all (nine) designated spot markets, are as follows:

PREMIUMS AND DISCOUNTS FOR GRADE AND STAPLE LENGTH OF 1982 CROP AMERICAN UPLAND COTTON

[Basis strict low middling 1 1/16 inches, net weight]

Grade	Code	Staple length (inches)								
		1 1/16 through 1 5/32 (26 to 29)	1 3/16 (30)	1 7/32 (31)	1 (32)	1 1/32 (33)	1 1/16 (34)	1 3/32 (35)	1 1/8 (36)	1 9/32 and longer (37 and longer)
		Points per pound								
White:										
SM and better	(11 and 21)	−980	−810	−545	−365	−40	+170	+210	+235	+350
MID plus	(30)	−1,000	−825	−570	−390	−60	+145	+190	+220	+325
MID	(31)	−1,005	−840	−575	−400	−75	+130	+170	+200	+305
SLM plus	(40)	−1,050	−875	−620	−460	−155	+50	+90	+120	+220
SLM	(41)	−1,075	−900	−650	−505	−200	B	+40	+65	+165
LM plus	(50)	−1,175	−1,015	−765	−640	−420	−250	−220	−200	−105
LM	(51)	−1,240	−1,080	−835	−735	−560	−390	−365	−330	−250
SGO plus	(60)	−1,515	−1,430	−1,335	−1,280	−1,095	−1,015	−1,000	−974	−960
SGO	(61)	−1,565	−1,480	−1,385	−1,345	−1,180	−1,100	−1,085	−1,060	−1,050
GO plus	(70)	−1,845	−1,780	−1,700	−1,665	−1,535	−1,465	−1,455	−1,435	−1,430
GO	(71)	−1,900	−1,835	−1,775	−1,740	−1,610	−1,550	−1,535	−1,520	−1,510
Light spotted:										
SM and better	(12 and 22)	−1,030	−865	−610	−455	−120	+75	+110	+140	+230
MID	(32)	−1,075	−910	−650	−510	−210	−10	+25	+55	+140
SLM	(42)	−1,195	−1,060	−815	−710	−530	−365	−340	−310	−230
LM	(52)	−1,460	−1,345	−1,215	−1,190	−1,090	−1,005	−990	−975	−960
Spotted:										
SM and better	(13 and 23)	−1,280	−1,195	−1,110	−1,030	−715	−590	−575	−550	−540
MID	(33)	−1,355	−1,275	−1,185	−1,115	−930	−815	−810	−785	−770
SLM	(43)	−1,535	−1,465	−1,415	−1,380	−1,260	−1,190	−1,180	−1,175	−1,160
LM	(53)	−1,720	−1,660	−1,630	−1,610	−1,505	−1,455	−1,445	−1,430	−1,415

PREMIUMS AND DISCOUNTS FOR GRADE AND STAPLE LENGTH OF 1982 CROP AMERICAN UPLAND COTTON—Continued

[Basis strict low middling 1 1/16 inches, net weight]

Grade	Code	Staple length (inches)								
		13/16 through 25/32 (26 to 29)	15/16 (30)	31/32 (31)	1 (32)	1 1/32 (33)	1 1/16 (34)	1 3/32 (35)	1 1/8 (36)	1 5/32 and longer (37 and longer)
Tinged: [1]										
SM	(24)	−1,650	−1,575	−1,550	−1,525	−1,510	−1,495	−1,495	−1,335	−1,335
MID	(34)	−1,690	−1,610	−1,585	−1,560	−1,545	−1,535	−1,535	−1,380	−1,380
SLM	(44)	−1,765	−1,695	−1,675	−1,660	−1,645	−1,635	−1,635	−1,490	−1,490
LM	(54)	−1,890	−1,820	−1,795	−1,775	−1,765	−1,755	−1,750	−1,615	−1,615
Light gray:										
SM and better	(16 and 26)	−1,210	−1,045	−790	−625	−270	+10	+70	+110	+195
MID	(36)	−1,365	−1,205	−1,010	−925	−660	−385	−345	−290	−210
SLM	(46)	−1,775	−1,695	−1,595	−1,520	−1,230	−1,110	−1,075	−1,005	−990
Gray:										
SM and better	(17 and 27)	−1,365	−1,205	−1,015	−930	−710	−455	−420	−365	−285
MID	(37)	−1,780	−1,695	−1,595	−1,520	−1,310	−1,170	−1,130	−1,055	−1,040
SLM	(47)	−2,160	−2,080	−2,010	−1,950	−1,770	−1,645	−1,610	−1,535	−1,525

[1] Cotton classed as "Yellow Stained" (Middling and better grades) will be eligible for loan, if otherwise eligible, at a discount 200 points greater than the discount applicable to the comparable quality in the color group "Tinged".

Grade Symbols: SM—Strict Middling; MID—Middling; SLM—Strict Low Middling; LM—Low Middling; SGO—Strict Good Ordinary; GO—Good Ordinary.

B. *Micronaire Discounts for Upland Cotton.* The 1982-crop loan differentials for micronaire, determined by using a simple average (1:1) of (a) loan differentials for the preceding (1981) crop and (b) the simple average of market differentials for the seven-month period (August 1981 through February 1982) in four of the nine designated spot markets (Montgomery, Memphis, Dallas and Lubbock), are as follows:

SCHEDULE OF MICRONAIRE DIFFERENTIALS FOR 1982-CROP UPLAND COTTON

Micronaire reading	Points per pound
5.3 and above	−205
5.0 through 5.2	−105
3.5 through 4.9	0
3.3 through 3.4	−165
3.0 through 3.2	−425
2.7 through 2.9	−685
2.6 and below	−965

C. *Micronaire Discounts for ELS Cotton.* The 1982-crop loan differentials for micronaire determined by using a simple average (1:1) of (a) loan differentials for the preceding (1981) crop and (b) the simple average of market differentials for the seven-month period (August 1981 through February 1982) in the El Paso, Texas, and Phoenix, Arizona markets, are as follows:

SCHEDULE OF MICRONAIRE DIFFERENTIALS FOR ELIGIBLE QUALITIES OF 1982-CROP EXTRA LONG STAPLE COTTON (AMERICAN PIMA)

Micronaire reading	Points per pound
3.5 and above	0
3.3 through 3.4	−275
3.0 through 3.2	−480
2.7 through 2.9	−940

2. *Loan Rates for Upland Cotton.* Base loan rates for eligible 1982-crop upland cotton by warehouse location can be obtained from State and county ASCS offices. The freight rates used to reflect location differentials were determined at 75 percent of the actual rates established for 50,000 pound minimum carload lots in all areas except California and Arizona, where minimum carload lots are 62,500 pounds.

3. *Loan Rates for Eligible Qualities of ELS Cotton.* Loan rates for the individual qualities of 1982-crop ELS cotton (basis good micronaire), determined by (1) adjusting the national average loan rate upward to reflect the premium currently considered applicable to good micronaire ELS cotton, (2) weighting average prices (August 1981 through February 1982) for eligible qualities in the El Paso, Texas, and Phoenix, Arizona, markets to the adjusted loan level, using as weights the most recent five-year average production by qualities, and (3) establishing a location differential between the Arizona-California area and the West Texas-New Mexico area to reflect approximate transportation costs between the two areas, are as follows:

SCHEDULE OF LOAN RATES FOR ELIGIBLE QUALITIES OF 1982-CROP EXTRA LONG STAPLE COTTON (AMERICAN PIMA)

[In cents per pound, Net Weight—micronaire 3.5 and above] [1]

	Staple length (inches)			
	1 3/4		1 13/16 and longer	
	Cotton stored in approved warehouses in—		Cotton stored in approved warehouses in—	
	Arizona and California	New Mexico, Texas, and other States	Arizona and California	New Mexico, Texas, and other States
Grade:				
1	104.40	105.30	104.90	105.80
2	103.90	104.80	104.40	105.30
3	103.45	104.35	103.90	104.80
4	102.25	103.15	102.75	103.65
5	92.60	93.50	92.85	93.75
6	78.40	79.30	78.65	79.55
7	64.55	65.45	64.80	65.70
8	58.65	59.55	58.90	59.80
9	56.65	57.55	56.90	57.80

[1] A micronaire premimum of 65 points (0.65 cent) per pound is included in the loan rate for each eligible quality; thus, the national average loan rate reflected in the above schedule is 100.54 cents per pound. Cotton with micronaire readings below the micronaire range "3.5 and above" will be subject to the discounts in the schedule of micronaire differences for ELS cotton shown above.

Signed at Washington, D.C., on August 9, 1982.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 82-22207 Filed 8-17-82; 8:45 am]

BILLING CODE 3410-05-M

Foreign Agriculture Service

User Fees for Services of Trade Opportunity Referral Service to Private Sector

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public that the publications, trade lead mail-outs and trade lists of the Trade

Opportunity Referral Service (TORS), previously obtained free of charge from the Foreign Agricultural Service, will now be available to the public for a reasonable user fee to cover the cost of computer time, duplication, handling and mailing.

EFFECTIVE DATE: October 1, 1982.

FOR FURTHER INFORMATION CONTACT: Lyle Moe, TORS Coordinator, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4945, South Building, Washington, D.C. 20250. Telephone: (202) 447–7130.

SUPPLEMENTARY INFORMATION: The newsletter *Export Briefs*, Trade Lead Mailouts, and Trade Lists of the Trade Opportunity Referral Service, previously made available free of charge to the general public by the Foreign Agricultural Service, will now be subject to a reasonable user fee to cover the cost of computer time, duplicating, handling, and mailing. The fees will be as follows:

1. $50 for a yearly subscription to *Export Briefs*. This weekly newsletter contains trade leads from overseas plus other foreign trade development information.

2. $10 per commodity, per year, to receive individual foreign trade leads via direct mail.

3. For lists of Foreign Importers and U.S. Exporters: (a) Printouts. $5.00 minimum charge, $1.00 per page over five. (b) Gummed mailing labels. Minimum charge of $3.00, ten cents per label over 30.

4. $20.00 for a yearly subscription to *CONTACTS for U.S. Farm Products*. This monthly publication services U.S. products being offered for export by U.S. firms.

Anyone interested in obtaining copies of the above publications, mailouts, or trade lists should send their written request to: TORS Coordinator, Export Promotion Division, Foreign Agriculture Service, U.S. Department of Agriculture, Rm. 4945–S, Washington, D.C. 20250.

(31 U.S.C. 483–a)

Dated: August 12, 1982.

Richard A. Smith,

Administrator.

[FR Doc. 82–22518 Filed 8–17–82; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Coronado National Forest Grazing Advisory Board; Meeting

The Coronado National Forest Grazing Advisory Board will meet at 10:00 a.m., September 21, 1982, at the Federal Building, 301 West Congress, Room 7X, Tucson, Arizona. The purpose of this meeting is to discuss allotment management planning and the use of range betterment funds.

The meeting will be open to the public. Persons who wish to attend should notify Larry Allen, Coronado Supervisor's Office, telephone 602–629–6418. Written statements will be filed with the board before or after the meeting.

The board has established the following rule for public participation: Nonmembers are asked to withhold comments until the close of business.

Dated: August 10, 1982.

Lee Poague,

Acting Forest Supervisor.

[FR Doc. 82–22477 Filed 8–17–82; 8:45 am]

BILLING CODE 3410–11–M

Office of the Secretary

Forms Under Review by Office of Management and Budget

August 13, 1982.

The Department of Agriculture has submitted to OMB 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. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Comments and questions about the items in the listing should be directed to the agency person named at the end of each entry. If you anticipate commenting on a form but find that preparation time will prevent you from submitting comments promptly, you should advise the agency person of your intent as early as possible.

Copies of the proposed forms and supporting documents may be obtained from: Richard J. Schrimper, Statistical Clearance Officer, (202) 447–6201

New

• Forest Service
Dispersed Recreation Use in Forested Areas
Nonrecurring
Individuals or households: 2,800 responses; 817 hours; not applicable under 3504(h)
Victor Rudis (205) 682–6784

• Foreign Agricultural Service
Certificate for Sugar Quota Eligibility—Reporting Burden
On occasion
Business or other institutions: 540 responses; 90 hours; not applicable under 3504(h)
Jim Truran (202) 447–2916

• Food and Nutrition Service
Commodity Supplemental Food Program—Recordkeeping
Monthly, quarterly, annually
State or local government: 529 responses; 8,089 hours; not applicable under 3504(h)
Karen Coffman (703) 756–3730

Extension

• Food and Nutrition Service
Commodity Supplemental Food Program Regulations—Reporting
FNS–151
Monthly, quarterly
Individuals or households, state or local governments: 294,266 responses; 167,072 hours; not applicable under 3504(h)
Karen Coffman (703) 756–3730

Richard J. Schrimper,

Statistical Clearance Officer.

[FR Doc. 82–22480 Filed 8–17–82; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Fireplace Mesh Panels From Taiwan; Countervailing Duty Investigation

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of Countervailing Duty Investigation.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to detemine whether manufacturers, producers, or exporters of fireplace mesh panels from Taiwan receive subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission ("ITC") of this action so that it may determine whether imports of fireplace mesh panels are materially injuring, or threatening to materially injure, a U.S. industry. If the investigation proceeds normally, the ITC will make its preliminary determination

on or before September 4, 1982 and we will make ours on or before October 15, 1982.

EFFECTIVE DATE: August 18, 1982.

FOR FURTHER INFORMATION CONTACT: Paul Nichols, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 377–5497.

SUPPLEMENTARY INFORMATION:

Petition

On July 22, 1982, we received a petition from counsel for Justesen Industries, Inc., Pacific Fireplace Furnishings, Inc., and Fall River Fireplace Co., Inc. on behalf of the U.S. fireplace mesh industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petitioner alleges that manufacturers, producers, or exporters of fireplace mesh panels receive subsidies within the meaning of section 771(5) of the Tariff Act of 1930, as amended ("the Act"), and that these imports are materially injuring, or threatening to materially injure, a U.S. industry. Since Taiwan is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and an injury determination is required.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting these allegations. We have examined the petition on fireplace mesh panels, and we have found that it meets these requirements.

Therefore, in accordance with section 702(c) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers or exporters in Taiwan of fireplace mesh panels receive benefits that constitute subsidies within the meaning of section 771(5) of the Act. If our investigation proceeds normally, we will make our preliminary determination by October 15, 1982.

Scope of Investigation

For the purposes of this investigation, fireplace mesh panels are defined as precut, flexible mesh panels, both finished and unfinished, which are constructed of interlocking spirals of steel wire and are of a kind used in the manufacture of safety screeing by U.S. manufacturers of fireplace accessories and zero-clearance fireplace. Fireplace mesh panels are provided for either in item 642.87 or item 654.00 of the Tariff Schedules of the United States depending on their stage of processing.

Allegation of Subsidies

The petitioner alleges that producers, manufacturers, or exporters in Taiwan receive the following benefits that constitute subsidies from the government of Taiwan: preferential income tax rates and preferential labor rates.

Notification to ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 4, 1982, whether there is a reasonable indication that imports of fireplace mesh panels from Taiwan are materially injuring, or threatening to materially injure, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will continue according to the statutory procedures.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

August 11, 1982.

[FR Doc. 82-22542 Filed 8-17-82; 8:45 am]

BILLING CODE 3510-25-M

Minority Business Development Agency

Financial Assistance Application Announcement; Hassidic Community of Williamsburg, Brooklyn, N.Y.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications for a Cooperative Agreement under its Business Development Center (BDC) program to operate a Neighborhood Commercial Revitalization project to assist the Hassidic Community of Williamsburg in Brooklyn, New York for a 12 month period beginning October 1, 1982. MBDA is seeking innovative approaches towards a focused effort at upgrading the commercial and residential sections of Williamsburg. Specific activities detailed in the application should include at a minimum:

(a) A plan to organize the Hassicic business community in an effort to obtain the community's support and involvement in this project;

(b) The identification of Federal, State, and local government funds, projects, and resources that may be utilized in a revitalization effort;

(c) A plan, strategy, and timetable by which the revitalization effort will be implemented;

(d) A plan to provide management and technical assistance to Hassidic-owned firms in the revitalization effort; and

(e) Specific accomplishments to be achieved at the end of the award period.

An award will be made in the form of a Cooperative Agreement no to exceed $360,000 of MBDA funds. Applicants shall be required to identify at least $40,000 (or 10% of total project costs if requesting less than $360,000) in cost-sharing contributions, in addition to the $360,000 offered by MBDA, which will be applied to the project.

CLOSING DATE: September 10, 1982.

Applications should be submitted in triplicate and mailed to the following address: U.S. Department of Commerce, Minority Business Development Agency, 14th & Constitution Avenue, Room 5093, Washington, D.C. 20230

For further information and/or an application kit call 202/377–2366.

SUPPLEMENTARY INFORMATION:

A. Scope and Purpose of this Announcement. Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to eligible clients in areas related to the establishment and operation of businesses. The Agency funds programs that are specifically designed to assist minority businesses that have the highest potential for success. In order to accomplish this effort, MBDA is offering a Cooperative Agreement that can: plan and organize the commercial and residential sections of the Williamsburg area in Brooklyn, New York in an effort to obtain support and involvement in this project; identify public sector and private funds, projects, and other resources that may be utilized in the revitalization of this area; develop

a plan strategy and timetable for the implementation of a revitalization effort; develop a plan to provide management and technical assistance to Hassidic owned business firms; and achieve specific accomplishments by the end of the award period.

B. Eligible Applicants. The award shall be open to all individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.

C. Evaluation Process. All proposals received as a result of this announcement will be evaluated by a MBDA review panel.

D. Evaluation Criteria for this Proposed Project. The evaluation criteria is designed to facilitate an objective evaluation of competitive applications.

MBDA reserves the right to reject any or all applications, including the application receiving the highest evaluation, and will exercise this right when it is determined that it is in the best interest of the Government to do so (e.g., the apparent successful applicant has serious unresolved audit issues from current or previous grants, contracts or cooperative agreements with an agency of the Federal Government).

Evaluation of proposals will employ the following criteria:

(a) The capability and experience of the firms (15%) and proposed staff (15%) in organizing and providing assistance to Hassidic businesses;

(b) The techniques and methodology proposed by the applicant to plan and implement its project as outlined in the application (30%);

(c) The resources proposed to meet MBDA's cost-sharing requirement (15%);

(d) The allocation, utilization, and reasonableness of the proposed project budget and costs (25%).

The failure to supply information in any given category of the criteria will result in the application being considered non-responsive and consequently, dropped from competition.

All information submitted is subject to vertification by MDGA.

E. Disposition of Proposals. Notification of the award will be made by the Grants Officer. Organizations whose proposals are unsuccessful will be advised by the MBDA—Office of Enterprise Development.

F. Proposal Instructions and Forms. Questions concerning the preceding information, copies of application forms, and applicable regulations can be obtained at the above address.

Nothing in this solicitation shall be constued as committing MBDA to divide available funds among all qualified applicants. The program is subject to OMB Circular A-95 requirements.

(11.800 Minority Business Development Agency (Catalog of Federal Domestic Assistance))

Dated: August 12, 1982.

Harold B. Jones,

Assistant Director for Enterprise Development.

Dated: August 13, 1982.

Theron J. Bell,

Deputy Director.

[FR Doc. 82-22534 Filed 8-17-82; 8:45 am]

BILLING CODE 3510-21-M

National Bureau of Standards

Open Meeting of the U.S. Delegation to the International Laboratory Accreditation Conference 1982

The Sixth International Laboratory Accreditation Conference (ILAC) will be held in Tokyo, Japan at the Sasakawa Hall, October 18–22, 1982. ILAC is an informal organization of delegates from approximately 42 nations and 12 international organizations whose overall purpose and objective is to promote: (1) The development of national programs for accrediting testing laboratories; (2) the employment of harmonized accreditation criteria; and (3) the development of bilateral or multilateral arrangements which would encourage importers to accept the results of tests and data made by laboratories that have been accredited under a recognized laboratory accreditation program in exporting nations.

In order to prepare for this Conference, the U.S. Delegation to ILAC/82 will hold a pre-conference meeting at 10:00 a.m. on Thursday, September 30, 1982, in Room A366, Building 221 (Physics) at the National Bureau of Standards, Gaithersburg, Maryland. The U.S. Delegation will (1) review Task Force reports which are submitted to the ILAC delegates, (2) consider the position that the U.S. Delegation should take in response to those reports, and (3) prepare any proposed resolutions for introduction at ILAC/82. The pre-conference meeting will be chaired by Dr. Stanley I. Warshaw, Director, Office of Product Standards Policy, National Bureau of Standards, who will also chair the U.S. Delegation to ILAC/82.

Anyone wishing to attend this meeting, which is open to the public, should notify Mr. John W. Locke, National Bureau of Standards, TECH B141, Washington, DC 20234, (301) 921-3431.

Dated: August 13, 1982.

Ernest Ambler,

Director, National Bureau of Standards.

[FR Doc. 82-22515 Filed 8-17-82; 8:45 am]

BILLING CODE 3510-13-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange; Proposed Amendments Relating to the Live Cattle Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Mercantile Exchange has submitted a proposal to amend its live cattle futures contract to allow for certificate delivery. The Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before September 17, 1982.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Reference should be made to the Chicago Mercantile Exchange, Chapter 15.

FOR FURTHER INFORMATION CONTACT: Robert Clark, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, (202) 254-7303.

SUPPLEMENTARY INFORMATION: The Chicago Mercantile Exchange ("CME" or "Exchange") is proposing to amend Chapter 15 of its live cattle futures contract. The Exchange's proposed amendments would allow for certificate delivery on the live cattle contract. The CME believes that the proposed delivery system would virtually eliminate the redelivery of live cattle, reduce the total number of deliveries, encourage greater long hedging participation and provide the USDA graders earlier notification of the number and location of the deliveries.

Under the Exchange's proposed system, a short trader would tender a certificate of delivery to the clearing house three business days before the intended date of delivery of the live

cattle. Prior to the intended delivery date, a certificate can be retendered twice by the receivers. To retender, a receiver must establish a short position and pay a retender charge of $600, which accrues to the next receiver of the certificate. A long trader may present a demand notice for specific certificates that have been tendered or retendered, and such traders will have priority over other longs in the assignment of certificataes. A short trader who has tendered a certificate may, prior to delivery day, establish a long position and reclaim his own certificate if it has been retendered and if it has not already been assigned to the issuer of a demand notice. Certificates may be tendered from the third business day prior to the first business day of the delivery month until the third business day prior to the last business day of the delivery month.

The proposed amendments to the live cattle contract would become effective immediately after Commission approval for all contract months subsequently listed by the Exchange for trading, but would not be applicable to currently listed months.

In accordance with Section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (Supp. IV 1980), the Commission has determined that the proposal submitted by the CME concerning its live cattle futures contract is of major economic significance. Accordingly, the proposed amendments of major economic significance are printed below, using brackets to indicate deletions and italics to indicate additions.

1503. *PROCEDURES FOR TENDER, DEMAND, RETENDER, RECLAIM, AND ASSIGNMENT OF CERTIFICATES OF DELIVERY*

A. Tendering a Certificate

A clearing member representing a short may present a Certificate of Delivery (on a form prescribed by the Clearing House) to the Clearing House no later than 1:00 p.m. on the third business day prior to any delivery day. A Certificate of Delivery is a commitment to deliver cattle conforming with contract specifications at the delivery point designated in the Certificate on the third business day which is also a delivery day following the tender of that Certificate if the Certificate is not reclaimed.

B. Posting

By 1:30 p.m. the Clearing House shall post a list of the tendered and retendered Certificates specifying delivery points and accrued retender charges. Demand Notices and Reclaim Notices may be presented only for Certificates which are included on the list.

C. Demand Notice

A clearing member representing a long may present a Demand Notice for the purpose of securing priority in the assignment of a Certificate of Delivery. The following rules govern Demand Notices:

1. The Demand Notice shall be presented to the Clearing House (on a form prescribed by the Clearing House) between 1:30 p.m. and 3:00 p.m. on any business day on which Certificates are tendered on retendered.

2. The Demand Notice shall specify: the date the long position was established, the buyer's choices (if any) for delivery points, and the minimum amount of accrued retender charges acceptable to the buyer.

3. A Certificate assigned to a Demand Notice may not be retendered.

4. A Demand Notice which is not assigned a Certificate on the day of presentment is void.

D. Retender

A clearing member representing a long that is assigned a Certificate may retender that Certificate. The following rules govern retender:

1. A Certificate may only be retendered twice. A long that has been assigned a Certificate which has been retendered twice must take delivery.

2. A Certificate that has been assigned to a Demand Notice may not be retendered.

3. A Certificate may not be retendered after the last trading day of the contract month.

4. A long assigned a Certificate must establish a short position in the delivery month and notify the Clearing House of retender by 1:00 p.m. on the business day following assignment. The short position may be established for the purpose of retendering without regard to the provisions of Rule 818.

5. The retendering long will be assessed a retender charge of $.015 per pound ($600 per contract). The retender charges accrue to the Certificate and are payable to the long exercising the Certificate or to the reclaiming short.

E. Reclaim

A clearing member representing a short that has tendered a Certificate may reclaim that Certificate upon the first or second retender if there is no Demand Notice issued for that Certificate.

The reclaiming short must have established a long position in the contract month and must issue a Reclaim Notice (on a form prescribed by the Clearing House) to the Clearing House between 1:30 p.m. and 3:00 p.m. on the day the Certificate is retendered. The long position may be established for the purpose of reclaiming without regard to the provisions of Rule 818.

F. Assignment of Certificates

The Clearing House shall assign Certificates and notify the clearing member representing the long on the day of tender or retender. Assignments shall be made in the following order:

1. Newly-tendered Certificates and retendered Certificates shall be assigned to Demand Notices which specify delivery points and retender charges which match those of the Certificate. In the case of duplication, the Certificate shall be assigned to the Demand Notice submitted by the long with the oldest long position. In the case of Demand Notices with long positions established on the same date, the time the Demand Notice was submitted to the Clearing House will determine priority.

2. Retendered Certificates which have not been assigned to Demand Notices will be assigned to Reclaim Notices, if any.

3. Retendered Certificates and newly-tendered Certificates which have not been demanded or reclaimed will be assigned to long positions by matching the Certificates having the largest retender charges with the oldest long positions.

G. Payments for Tender and Retender

1. All payments shall be by wire transfer of funds or by certified or cashier's check presented to the Clearing House.

2. Payment for an assigned Certificate must be submitted to the Clearing House by 12:00 noon on the business day after a tendered or retendered certificate is assigned. The assignee shall submit payment equal to the settlement price on the day of assignment less accrued retender charges times the par weight, 40,000 pounds.

3. Payment received for a newly-tendered Certificate shall be retained by the Clearing House until the Certificate is reclaimed or until cattle conforming with contract specifications are delivered.

4. The Clearing House shall remit payment received for a retendered Certificate to the retenderer by the close of business on the business day following the day of retender.

1504. DELIVERY PROCEDURES.—

In addition to the procedures or requirements of Chapter 7, the following shall specifically apply to the delivery of live beef cattle:

A. Delivery Days

Delivery of live cattle must take place on the third business day which is also a delivery day following the initial tender of the Certificate. Delivery may be made on any [Monday, Tuesday, Wednesday and Thursday] *business day* of the contract month except that deliveries may not be made on [a holiday or] the day preceding a holiday.

B. Seller's Duties

[A seller intending to make delivery shall present to the House a written Notice of Intent to Deliver on a form prescribed by the Exchange, and such notice must be delivered to the Clearing House no later than 1:00 p.m. one business day prior to actual delivery. The buyer shall be notified by the Exchange no later than 2:30 p.m. of said day.]

On the day of delivery, the seller shall promptly furnish the buyer[:] [1. An official livestock yeards receipt properly identified by lot number and/or pen number, number of head of cattle, net weight of cattle and date received.] [2.] *a* [offical] USDA *Livestock Acceptance Certificate which shall include pen number, number of head, net weight of cattle,* quality grade, estimated average hot yield, *and* estimated yield grade. [and weight certificate]

[3. Delivery order.]

[C. Buyers Duties]

[Clearing member firms receiving a Notice of Intent to Delivery may not liquidate the long position assigned delivery and must deposit with the Clearing House not later than 10:00 a.m. the following business a Certified or Cashier's check in an amount sufficient to meet the cost of delivery. This amount shall be determined by multiplying the weight of the contract, 40,000 pounds, by the settlement price of the day the Notice of Intent is received.]

[D.] C. Payment

Upon the seller's fulfillment of the delivery in accordance with all conditions of the contract herein set forth, the Clearing House shall [act as a depository for the transfer of such funds] *release the retained funds* to the seller. Title to each delivered unit shall pass to the buyer [upon such unit being] *when the delivered unit is* placed in the buyer's holding pen.

* * * * *

1505. PAR DELIVERY AND SUBSTITUTIONS.—

* * * * *

H. Payment for Deviations

For the purpose of computing adjustments resulting from deviations from the par delivery unit, the settlement price at the time the Certificate is assigned to the exercising long will be used.

* * * * *

Rule *1509.* Penalties

If the seller fails to present deliverable cattle on the date and *at the* place specified in his [Notice of Intent to Deliver] *Certificate of Delivery,* he shall be penalized. *The penalities shall be* $.005 per pound each business day that *a load of* cattle *is presented but fails to pass inspection* until proper delivery is made. *However, for each business day that the seller fails to present a load of cattle the USDA grader can inspect (according to the provisions of Rule 1506.B.) the penalty shall be .015¢ per pound.*

Other materials submitted by the CME in support of the proposed rules may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1981)). Requests for copies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by [thirty (30) days after publication]. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C., on August 13, 1982.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82-22532 Filed 8-17-82; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Performance Review Boards; List of Members

Below is a listing of Additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Secretariat

Florence W. Madden

Air Force Systems Command (AFSC)

Anthony J. DeLuca
Darlene A. Druyun

Air Force Logistics Command (AFLC)

Major General James E. Light
Brigadier General Charles McCausland

Others

Brigadier General Harold J.M. Williams

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 82-22476 Filed 8-17-82; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

New Production Reactor Concept and Site Selection Advisory Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: New Production Reactor (NPR) Concept and Site Selection Advisory Panel (CSSAP)

Date and time: Monday, September 13, 1982—9 a.m. to 5 p.m.; Tuesday, September 14, 1982—9 a.m. to 5 p.m.; Wednesday, September 15, 1982—9 a.m. to 5 p.m.

Place: Los Alamos National Laboratory, Los Alamos, New Mexico Technical Area 35, Building 68, Room 110.

Contact: Gloria Decker, Information Management Systems Branch, U.S. Department of Energy, Forrestal Building—Room 4D-024, 1000 Independence Avenue SW., Washington, D.C. 20585, telephone: (202 252-8990)

Purpose of the panel: To provide the Department of Energy (DOE) with advice regarding the selection of a reactor concept and site for DOE's proposed NPR.

Tentative Agenda: Briefings and discussion of:

- Fuel Cycle Comparisons
- Concept Related Environmental Comparisons
- Economic Comparisons
- Site Comparisons
- Panel Deliberations

Public participation: Because the meeting of the NPR-CSSAP will

involve the discussion of Restricted Data, as defined in the Atomic Energy Act of 1954, the meeting will be closed in the interest of National security. The deliberations of the NPR–CSSAP are such that no portion of the meeting will be unrelated to Restricted Data.

Transcripts: Will be maintained in Technical Area 35, Building 68, Room 110. They will be classified and thus will not be available to the public

Issued at Washington, D.C., on August 13, 1982.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 82–25544 Filed 8–17–82; 8:45 am]

BILLING CODE 6450–01–M

Office of Assistant Secretary for International Affairs

Atomic Energy; Proposed Subsequent Arrangement; U.S. and EURATOM

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the sale of 100 grams of natural uranium as oxide to British Nuclear Fuels Ltd., the United Kingdom, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material under Contract Number S–EU–743 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: August 13, 1982.

For the Department of Energy.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82–22545 Filed 8–17–82; 8:45 am]

BILLING CODE 6450–01–M

Atomic Energy; Proposed Subsequent Arrangement; U.S. and EURATOM

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The sebsequent arrangement to be carried out under the above mentioned agreement involves approval for the following sale:

Contract Number S–EU–741, to KfK, Karlsruhe, the Federal Republic of Germany, 400 milligrams of plutonium-239, for use in solubility measurements of plutonium-oxide in water and in salt brine, related to radioactive waste disposal in salt formations.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear materal will not be inimical to the common defense and security.

This sebsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: August 13, 1982.

For the Department of Energy.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82–22547 Filed 8–17–82; 8:45 am]

BILLING CODE 6450–01–M

Atomic Energy; Proposed Subsequent Arrangement; U.S. and Canada

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the supply of the following material: Contract Number WC–CA–28, to Ontario Hydro Research Division, Ontario, Canada, 5.94 kilograms of uranium, depleted in the isotope U-235, to be used for tests of uranium fluid bed reactors.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: August 13, 1982.

For the Department of Energy.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82–22546 Filed 8–17–82; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Energy Research Advisory Board

Date and time: Thursday, September 9, 1982—9:00 am to 5:00 pm. Friday, September 10, 1982—9:00 am to 5:00 pm.

Place: U.S. Department of Energy, Room 8E–089, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585

Contact: Gloria Decker, Information Management Systems Branch, U.S. Department of Energy, Forrestal Building—Room 4D–024, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: 202–252–8890

Purpose of the board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative agenda: Briefings and discussions of:

- Draft reports of Solar R&D Panel and Multiprogram National Laboratory Panel
- Federal role in energy R&D
- Public comment (10 minute rule)

Public participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gloria Decker at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 8:30 a.m. and 4 p.m. Monday through Friday, except federal holidays.

Issued at Washington, DC, on August 12, 1982.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 82-22491 Filed 8-17-82; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-82-010; FC Case No. 55172-9221-20-24]

Kimberly-Clark Corp.; Order Granting Exemption from Powerplant and Industrial Fuel Use Act

AGENCY: Economic Regulatory Administration, DOE

ACTION: Order granting to Kimberly-Clark Corporation an Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On April 1, 1982 Kimberly-Clark Corporation, hereinafter referred to as petitioner, filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanemt cogeneration exemption for an electric powerplant from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act) that (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rules containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA were published in the **Federal Register** at 46 FR 59872 (December 7, 1981) and 47 FR 29209 (July 6, 1982). Criteria governing the cogeneration exemption are contained in 10 CFR 503.37.

The petitioner requested a permanent cogeneration exemption for a proposed 23.6 megawatt gas-fired, with oil backup, cogeneration powerplant to produce electricity for sale to the Southern California Edison Company and steam for production processes at its plant at Fullerton, California.

Pursuant to section 212(c) of the Act and 10 CFR 503.37, ERA hereby issues this Order granting a permanent cogeneration exemption for the new powerplant. The basis for ERA's Order is provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: In accordance with section 702(a) of FUA, this Order and its provisions shall take effect on October 17, 1982.

The public file containing a copy of this Order and other documents and supporting materials on this proceeding is available for inspection upon request at: Department of Energy Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m.–4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Joseph R. DeVries, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-073, 1000 Independence Avenue SW., Washington, D.C. 20585. Phone (202) 252-6002

Marya Rowan, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6B-178, 1000 Independence Avenue SW., Washington, D.C. 20585. Phone (202) 252-2967

SUPPLEMENTARY INFORMATION: The proposed powerplant for which the petition for exemption has been filed is a 20.1 megawatt gas-fired combustion turbine, with oil backup, connected to a 3.5 megawatt steam turbine with a heat recovery steam generator to be operated at the petitioner's Fullerton, California plant. The turbine has a designed heat input rate of 197.7 MMBTU's per hour. The heat recovery steam boiler will receive no supplemental firing. The powerplant will be used to produce electricity for sale to the Southern California Edison Company and steam for the company's production process.

The petitioner certified that the oil or gas to be consumed by the congeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility where the calculation of savings is in accordance with 10 CFR 503.37(b); that the use of mixtures is not feasible, as required under 10 CFR 503.9; and that the criteria in 10 CFR 503.37(a)(1) are, therefore, satisfied by the proposed powerplant.

Documentary evidence submitted by the petitioner in support of its petition under 10 CFR 503.37(a)(1) include: (1) The duly executed certifications required under that subparagraph; (2) exhibits containing the basis for the certifications, including the supporting factual and analytical materials; and (3) an environmental impact analysis, as required under 10 CFR 503.13(a) of the final rule.

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(b), ERA published its Notice of its Acceptance of Petition for Exemption and Availability of Certification relating to the proposed powerplant in the **Federal Register** on May 12, 1982 (47 FR 20349), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of the petition to the Environemntal Protection Agency for comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed on June 28, 1982. No comments were received and no hearing was requested.

DECISION AND ORDER: Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.37(a)(1) and, pursuant to section 212(c) of FUA, ERA hereby grants the petitioner a permanent cogeneration exemption for the proposed new powerplant to be located at its plant at Fullerton, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this Order may petition for judicial review thereof at any time before the 60th day folowing the publication of this Order in teh **Federal Register.**

Issued in Washington, D.C. on August 10, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-22492 Filed 8-17-82; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of June 21 Through June 25, 1982

During the week of June 21 through June 25, 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.

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 Avenue, N.W., 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.

Richard T. Tedrow,

Acting Director, Office of Hearings and Appeals.

August 12, 1982.

Remedial Orders

Beacon Bay Enterprises, June 21, 1982; *BRO–1308*

On November 17, 1980, Beacon Bay Enterprises filed a Statement of Objections to a Proposed Remedial Order (PRO) that the Economic Regulatory Administration (ERA) issued to the firm on July 29, 1980. In the PRO, the ERA alleged that the firm had charged prices for gasoline higher than those permitted by 10 CFR 210.93(a)(2). In its Statement of Objections, the firm stated that it had charged a cents-per-gallon fee for service associated with the sale of gasoline, despite the fact that such fees were prohibited by 10 CFR 210.62(d)(1). The firm also argued that although it had overcharged its customers because of a mistaken understanding of the applicable regulations, its "mistake" had caused no harm to its customers. After considering the firm's objections, the DOE concluded that the PRO should be issued as a final Remedial Order. The issues discussed in the decision include the appropriateness of payment to the United States Treasury as an equitable remedy for violation of the pricing regulations.

Marinas of the Future, Inc., June 22, 1982; *BRO–1525*

Marinas of the Future, Inc. (Marinas) objected to a Proposed Remedial Order (PRO) which the Northeast District of the Economic Regulatory Administration (ERA) issued to the firm on February 25, 1981. In the PRO, the ERA found that Marinas had sold regular leaded motor gasoline to retail customers at prices in excess of the firm's maximum lawful selling prices, and that the firm should be required to make refunds to correct for its violations. The DOE concluded that the PRO should be issued as a final Order. The important issues discussed in the Decision and Order include (i) whether a firm's operational circumstances as a marina exempt it from DOE regulations, and (ii) whether each outlet's violation of 10 CFR 212.93 were computed separately in order to determine Marinas' total liability.

In the following case involving a Proposed Remedial Order, no Statement of Objections was filed. The DOE therefore issued the order in final form.

Company Name and Case No.

Ted Montague, d.b.a. Ted's Union Service—HRW–0018

Request for Stay

New York State Energy Office; Controller of the State of California, June 25, 1982; *HES–0017, HET–0001, HES–0019*

The New York State Energy Office filed an Application for Stay in which it requested that certain remedial provisions in a consent order which the DOE had entered into with the Permit Corporation be stayed, pending a final determination on a Petition for Special Redress which it filed on the same day. Subsequently the Controller of the State of California filed an Application for Temporary Stay and an Application for Stay seeking the same relief. The DOE found that the action which the states sought to stay had already been completed and that therefore their applications were moot. In addition, the DOE found that the challenged action was not irreversible and that therefore the states could not demonstrate that irreparable injury would result in the absence of a stay. Accordingly, the states' Applications were denied.

Motion for Discovery

Bill Forney, Inc., June 23, 1982; *BRD–1450*

Bill Forney, Inc. filed a Motion for Discovery in connection with its Statement of Objections to a Proposed Remedial Order (PRO) issued to the firm on May 20, 1981. In its discovery motion, Forney sought numerous documents and responses to interrogatories regarding the PRO's application of the property definition to Forney's unitized leases. The firm also sought discovery concerning the posted price used in the PRO and the lawfulness of the DOE's current policy for assessing interest on overcharges. In considering the request, the DOE found that the firm had not established that administrative record discovery or contemporaneous construction discovery on the application of the property definition to unitzed premises was warranted, since the firm had failed to show any ambiguity in the application of the property concept to its factual situation. The DOE also found that Forney's requests regarding the PRO's use of posted prices and its policy of assessing interest on overcharges would be unlikely to result in the discovery of relevant and material evidence. Accordingly, the Motion for Discovery was denied.

Supplemental Orders

The 341 Tract Unit of the Citronelle Field, June 21, 1982; *BEX–0031*

Pursuant to the provisions of a Decision and Order issued to the Citronelle Unit on May 21, 1982, the Unit was required to deposit within twenty days after the end of each month the revenues from the sale of the tertiary crude oil in a special, interest-bearing escrow account. *The 341 Tract Unit of the Citronelle Field*, 9 DOE ¶ 82,571 (1982). The Citronelle Unit requested that the time period for depositing these revenues be extended in order that the Unit can more accurately determine the quantities of tertiary crude oil. In considering the Unit's request, the DOE found that an extension of time was warranted since the Unit could not compile the requisite data in the period set forth in the May 21 Order. The DOE therefore concluded that a thirty day extension of time should be added to the time period set forth in the May 21 Order.

True Oil Company, June 23, 1982; *HRX–0032*

In *True Oil Co.*, 9 DOE ¶ ——, No. HRD–0026 (June 3, 1982), the Office of Hearings and Appeals (OHA) directed the Economic Regulatory Administration (ERA) to submit for *in camera* inspection portions of two documents that the ERA had withheld from discovery by the True Oil Company (True) on grounds of privilege. In its *in camera* inspection of the portions of the two documents at issue, the OHA determined that the documents were protected from disclosure by the deliberative process privilege, and that True's interest in the documents did not outweigh the ERA's interest in maintaining the confidentiality of the deliberative process.

Protective Order

The following firms filed an Application for Protective Order. The application; if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firms. The DOE granted the following application and issued the requested Protective Order as an Order of the Department of Energy:

Name and Case No.

Mobile Oil Corp./Little America Refining Co.—HEJ–0011

[FR Doc. 82–22489 Filed 8–17–82; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of July 19 through July 23, 1982

During the week of July 19 through July 23, 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.

Appeals

Alan Ramo, 7/23/82; *HFA–0066*

Alan Ramo filed an Appeal from a denial by the Director of the DOE Office of Classification of a Request for Information which Ramo had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the classified document which was the subject of the appeal, document no. 2027, had been properly classified as being within the terms of Executive Order No. 12065. Accordingly, it was determined that the document had been correctly withheld by the Director of Classification pursuant to Exemption 1 of the FOIA.

Professor William H. Rodgers, 7/23/82; *HFA–0061*

Professor William H. Rodgers Jr. of the University of Washington School of Law filed an Appeal from a partial denial by the Freedom of Information Officer of the Bonneville Power Administration (BPA) of a request for information which the Appellant had submitted under the Freedom of Information Act. In considering the Appeal,

the DOE found that the withheld material consisting of legal memoranda and related documents prepared by BPA's Office of General Counsel fell within Exemption 5. The DOE further found that their disclosure would be contrary to the public interest. Accordingly, Professor Rodger's Appeal was denied.

John D. Wall, 7/21/82; HFA-0065

John D. Wall filed an Appeal from a partial denial by the Director of the Office of Safeguards & Security of a Request for Information which he had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the Director's determination failed to adequately justify his decision to withhold portions of various documents pursuant to FOIA Exemptions 5 and 7. Accordingly, the Appeal was granted and the matter was remanded to the Director who was directed to either release the documents or provide an adequate justification for withholding them.

Remedial Orders

Hudson & Hudson, 7/19/82; HRO-0003

On November 23, 1981, Hudson & Hudson objected to a Proposed Remedial Order which the Central Enforcement District of the Economic Regulatory Administration issued to the firm on September 23, 1981. In the Proposed Remedial Order, the ERA found that Hudson improperly treated crude oil produced from three of its properties as "stripper well" crude oil and had therefore sold that oil at prices in excess of the applicable ceiling price. After considering the firm's objections, the DOE concluded that the Proposed Remedial Order should be issued as a final Remedial Order. The important issues discussed in the Decision and Order include (i) whether injection wells should be considered in a total well count for purposes of determining a property's stripper status; (ii) whether the DOE is bound by the determinations of a district court; (iii) the issue of a firm's good faith; and (iv) the relevance of state statutes of limitations in DOE enforcement actions. The decision also considered irrelevant a private release agreement executed between Hudson and one of its purchasers on the grounds that pursuant to Section 209 of the Economic Stabilization Act of 1970, the DOE had the right to seek administrative remedies to enforce its regulations in the public's interest.

Terrace Mobil, 7/19/82; BRO-1161

On May 19, 1980, Terrace Mobil filed a Statement of Objections to a Proposed Remedial Order that the Economic Regulatory Administration of the Department of Energy had issued to the firm on July 29, 1980. In the Proposed Remedial Order, the Economic Regulatory Administration found that the firm had charged prices for gasoline higher than those permitted by 10 CFR 210.93(a)(2) and that the firm had violated the posting requirements set forth at 10 CFR 212.129(b). In its Statement of Objections, the firm's principal argument was that in applying the retailer price rule to the firm the agency was required to take into account the firm's alleged unprofitability caused by low allocations of gasoline. After considering the firm's objections, the DOE concluded that the Proposed Remedial Order should be issued as a final Remedial Order. The issues discussed in the decision include the appropriateness of payment to the United States Treasury as an equitable remedy for violation of the pricing regulations.

Requests for Exception

Ashland Oil, Inc., Gulf Oil Corporation, 7/19/82; *BEE-0373, BMR-0016, BSG-0007*

Ashland Oil, Inc. (Ashland) filed an Application for Exception in which it requested the DOE to direct several major refiners to supply it with crude oil to replace the supplies that it lost when the President ordered an immediate ban on the importation of Iranian crude oil on November 12, 1979. In a proposed decision issued on February 11, 1980, the DOE found that as a result of the November 12 Presidential Proclamation Ashland had lost access to significant volumes of imported crude oil at prices substantially below the prevailing spot market prices, and that, in the absence of exemption relief, Ashland's allocation fractions for motor gasoline and distillates would drop significantly, resulting in severe disruption of economic activity in the marketing areas in which Ashland operates. Accordingly, the OHA proposed to assign nine refiners to supply Ashland with an average of 60,000 BPD of crude oil for the period December 1979 through February 1980. In the present decision, the DOE confirmed those findings with respect to December 1979 and January 1980. The DOE, however, reduced by 50 percent the relief proposed for February 1980, finding that as a result of several factors, including a decline in spot market crude oil prices and Ashland's overstatement of its motor gasoline base period obligations, that Ashland did not bear its share of the burdens caused by the Presidential Proclamation. Accordingly, Ashland was ordered to make monetary restitution to the suppliers to disgorge the excess benefits it received under the terms of the proposed decision, and compensate the suppliers for the profit opportunities they lost as a result of the crude oil sales to Ashland. The DOE also considered the suppliers' arguments concerning: (1) The authority of the OHA to grant exception relief to Ashland; (2) the firm's constitutional rights to procedural and substantive due process; and (3) OHA's formula for assigning the supply obligations and the price terms of the crude oil sales to Ashland. In addition, the DOE dismissed Ashland's Petition for Special Redress and the Gulf Motion for Reconsideration.

Memphis Aero Corporation, 7/23/82; DEE-2810

On March 20, 1979, Memphis Aero Corporation filed an Application for Exception from the provisions of 10 CFR 212.93 in which the firm sought permission to increase retroactively its prices for aviation fuels above the maximum allowable selling prices for the period from November 1, 1973 through August 31, 1976. In considering the exception request, the DOE found that exception relief was necessary to prevent Memphis Aero from incurring a severe and irreparable injury. Important issues discussed in the Decision and Order include (i) whether the firm met the strict standards for retroactive exception relief, and (ii) the appropriate level of exception relief necessary to avert a severe and irreparable injury.

Interlocutory Order

Marathon Oil Company, 7/23/82; HRZ-0065

In a Decision and Order issued on January 26, 1982, OHA granted substantial portions of a Motion for Discovery filed by Marathon Oil Company (Marathon). *Marathon Oil Co.*, 9 DOE ¶84,012 (1982). Subsequently, Marathon filed a Motion to Compel Discovery in which the firm claimed that the Office of Special Counsel for Compliance (OSC) failed (i) to produce all the workpapers required by the January 26, 1982 Discovery Order; (ii) to produce all documents that contain or relate to the information requested; (iii) to provide or certify the administrative records for the applicable DOE price regulations; and (iv) to provide an adequate response to Interrogatory No. 3. In considering Marathon's Motion to Compel Discovery, the OHA determined that the OSC should provide a further answer to Interrogatory No. 81 and produce any documents that contain or relate to that answer. The OHA also determined that the OSC should provide the administrative record, as defined by the Administrative Conference of the United States, for the refiner price regulations, 10 CFR Part 212, Subpart E. In all other respects, the Motion was denied.

Refund Applications

Vickers Energy Corp./Truman E. Page d.b.a. Vickers Service, RF1-123; Vickers Energy Corp./Jimmie J. Main, RF1-197; Vickers Energy Corp./George Coleman, RF1-264; Vickers Energy Corp./Francis G. Chenoweth, RF1-320; Vickers Energy Corp./Umbarger Service Station, RF1-252; Vickers Energy Corp./Kansas Enterprise, Inc., RF1-33; Vickers Energy Corp./Midwestern Oil & Supply Co., Inc., RF1-199; Vickers Energy Corp./Borts Oil Co., 7/19/82, RF1-330

On July 17, 1981, the Office of Hearings and Appeals issued a Decision and Order implementing special refund proceedings with respect to a $2,850,000 fund obtained by the DOE through a consent order with Vickers Energy Corporation. *See Office of Enforcement: In the Matter of Vickers Energy Corp.*, 8 DOE ¶82,597 (1981). The July 17 Decision stated that the DOE would accept applications for refund filed by purchasers of Vickers motor gasoline from other than company-operated retail outlets. On July 19, 1982, the Office of Hearings and Appeals issued a Supplemental Order concerning eight of the applications for refund filed in response to the July 17 Decision. In considering those applications, the DOE determined that they had met the standards set forth in the July 17 Decision and in DOE regulations applicable to special refund proceedings, 10 CFR Part 205, Subpart V. Accordingly, the eight applications were granted.

Tenneco Oil Co./Cary Oil Co., et al., 7/23/82; RF7–2 et al.

Cary Oil Co. *et al.* filed applications for refund pursuant to the decision issued in *The Office of Special Counsel: In the Matter of Tenneco Oil Corp.*, 9 DOE ¶82,538 (1982). In considering these applications, the DOE determined that 9 applicants were eligible for a refund because of injury resulting from alleged overcharges. One application was denied because it requested a refund for an amount under $15.00. Accordingly, the decision ordered that refunds from the Tenneco consent fund be paid to the applicants whose claims were found to be meritorious.

Tenneco Oil Co./Farmland Industries, Inc., 7/21/82; RF7–42

Farmland Industries, Inc. filed an Application for Refund pursuant to the Decision of the Office of Hearings and Appeals establishing special refund procedures for the distribution of money obtained by the DOE under a consent order with Tenneco Oil Company. *See Office of Special Counsel: In the Matter of Tenneco Oil Co.*, 9 DOE ¶82,538 (1982). In considering the Application, the OHA noted that Farmland is an agricultural cooperative association which already has a mechanism in place that it can use to distribute the benefit of any refund it might receive from the Tenneco consent order funds to its member-customers. Since Farmland established that it was eligible to receive a refund based on its purchases of propane from Tenneco during the consent order period, the Application was approved on the condition that the refund be distributed to Farmland's member-customers.

Tenneco Oil Company/Sav-A-Thon Self Service et al, 7/23/82; RF–13 et al.

Sav-A-Thon Self Service *et al.* (Sav-A-Thon *et al.*) filed Applications for Refund pursuant to a Decision and Order issued on February 18, 1982 in *Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). In their Applications Sav-A-Thon *et al.* sought a portion of a fund obtained by the DOE through a consent order entered into by the agency and the Tenneco Oil Company on January 18, 1981. In considering the requests, the DOE found that none of the applicants submitted the required information demonstrating that they maintained banks of unrecovered product costs during the period covered by the consent order. However, the DOE also found that the applicants had satisfied the requirements set forth in the Office of Special Counsel Decision that would allow them to receive refunds at the threshold level of 600,000 gallons annually per covered product. Accordingly, the Applications for Refund filed by Sav-A-Thon *et al.* were granted in part.

Dismissal

The following submission was dismissed without prejudice:

Name: Vickers Energy Corp./Dean Rob, Inc.; *Case No.* RF1–32

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., N.W., 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 commericially published loose leaf reporter system.

Richard T. Tedrow,

Acting Director, Office of Hearings and Appeals.

August 12, 1982.

[FR Doc. 82–22488 Filed 8–17–82; 8:45 am]

BILLING CODE 6450–01–M

Cases Filed; Week of July 23 through July 30, 1982

During the week of July 23 through July 30, 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.

Richard T. Tedrow,

Acting Director, Office of Hearings and Appeals.

August 12, 1982.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 23 through July 30, 1982]

Date	Name and location of applicant	Case No.	Type of submission
July 26, 1982	Ashland Oil, Inc., Washington, D.C.	HEX–0037	Supplemental Order. If granted: Ashland Oil, Inc., would be granted an additional 20 days to pay restitution that was required by the July 20, 1982 Decision and Order issued to the firm.
July 26, 1982	Atlantic Richfield Co., Los Angeles, Calif	HRX–0038	Supplemental Order. If granted: Atlantic Richfield Company would be granted discovery of certain documents which the Office of Special Counsel for Compliance submitted to the Office of Hearings and Appeals for in camera review pursuant to the July 12, 1982, Decision and Order issued to Atlantic Richfield Company (Case No. HRZ–0029).
July 26, 1982	Gulf Oil, Corp., Houston, Tex	HRX–0039	Supplemental Order. If granted: Gulf Oil Corporation would be granted discovery of certain documents which the Office of Special Counsel for Compliance submitted to the Office of Hearings and Appeals for in camera review pursuant to the July 12, 1982, Decision and Order issued to Atlantic Richfield Company (Case No. HRZ–0029).
July 26, 1982	Louisiana Land & Exploration Co., Mobile, Ala	HRX–0043	Supplemental Order. If granted: Louisiana Land & Exploration Company would be granted discovery of certain documents which the Office of Special Counsel for Compliance submitted to the Office of Hearings and Appeals for in camera review pursuant to the July 12, 1982, Decision and Order issued to Atlantic Richfield Company (Case No. HRZ–0029).
July 26, 1982	Marathon Oil Co., Findlay, Ohio	HRX–0040	Supplemental Order. If granted: Marathon Oil Company would be granted discovery of certain documents which the Office of Special Counsel for Compliance submitted to the Office of Hearings and Appeals for in camera review pursuant to the July 12, 1982, Decision and Order issued to Atlantic Richfield Company (Case No. HRZ–0029).
July 26, 1982	Standard Oil Co. of Ohio, Cleveland, Ohio	HRX–0041	Supplemental Order. If granted: Standard Oil Co. of Ohio wold be granted discovery of certain documents which the Office of Special Counsel for Compliance submitted to the Office of Hearings and Appeals for in camera review pursuant to the July 12, 1982 Decision and Order issued to Atlantic Richfield Company (Case No. HRZ–0029).
July 26, 1982	Texaco, Inc., White Plains, N.Y	HRX–0042	Supplemental Order. If granted: Texaco, Inc. would be granted discovery of certain documents which the Office of Special Counsel for Compliance submitted to the Office of Hearings and Appeals for in camera review pursuant to the July 12, 1982, Decision and Order issued to Atlantic Richfield Company (Case No. HRZ–0029).

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of July 23 through July 30, 1982]

Date	Name and location of applicant	Case No.	Type of submission
July 26, 1982	Texaco, Inc./Office of Special Counsel, White Plains, N.Y.	HRZ-0078	Interlocutory Order. If granted: The July 9, 1982, Decision and Order (Case No. HRZ-0069) issued to the Office of Special Counsel regarding a motion to compel discovery would be modified.
July 28, 1982	Briggs & Tillman, Inc., Clinton, Mo	HEE-0037	Exception to the Reporting Requirements. If granted: Briggs & Tillman would not be required to file Form EIA-764A.
July 28, 1982	Deiter Bros. Fuel Co. Inc., Bethlehem, Pa	HEE-0038	Exception to the Reporting Requirements. If granted: Deiter Bros. Fuel Co., Inc. would not be required to file forms EIA-764 and EIA-172.
July 28, 1982	Economic Regulatory Administration/Meeker & Co	HRR-0031	Request for Modification/Rescission. If granted: The July 12, 1982, Decision and Order (Case No. DRO-0138) issued to Meeker & Company by the Office of Hearings and Appeals would be modified regarding the language in the Decision and Order concerning the Economic Regulatory Administration's service to Meeker & Company of its "Motion for Modification of the PRO".
July 28, 1982	Imperial Refineries, Washington, D.C.	HRR-0030	Request for Modification/Rescission. If granted: The June 2, 1982 Remedial Order (Case No. BRO-0093) issued to Imperial Refineries by the Office of Hearings and Appeals would be modified regarding the pricing of petroleum products.
July 29, 1982	State of Rhode Island, Providence, R.I.	HEE-0039	Exception to the Energy Conservation Program. If granted: The State of Rhode Island would receive an exception from the provisions of 10 CFR 455, the Institutional Conservation Program, regarding the use of administrative funds under Cycle IV.

REFUND APPLICATIONS RECEIVED

[Week of July 23, 1982 to July 30, 1982]

Date	Name of refund proceeding/name of refund applicant	Case No.
July 26, 1982	Armstrong/City of San Antonio	RF17-1

[FR Doc. 82-22490 Filed 8-17-82; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Proposed Near-Term Resource Policy; Extension of Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Proposed Near-Term Resource Policy; Extension of Public Review and Comment.

SUMMARY: By Federal Register notice of July 15, 1982 (47 FR 30811) BPA announced a proposed major regional power policy regarding resource decisions that must be made in the near-term. A public comment forum was scheduled and held in Portland on July 28, 1982. This notice extends the period that BPA will accept public comments from August 16, 1982 to August 31, 1982.

DATES: Any interested party wishing to discuss the proposed policy or wishing more information on the policy may call the Public Involvement Coordinator. Written comments may be submitted through August 31, 1982.

ADDRESSES: Written comment should be submitted to the Public Involvement Coordinator, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT:

Ms. Donna L. Geiger, Public Involvement Coordinator, P.O. Box 12999, Portland, Oregon 97212, 503-230-3478. Oregon callers may use the toil-free number 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800-547-6048.

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-345-0311.

Mr. Ronald H. Wilkerson, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. Gordon H. Brandenburger, Montana District Manager, 800 Kennington, Missoula, Montana 59801, 406-329-3860.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99352, 509-525-5500, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Issued in Portland on August 13, 1982.

Earl Gjelde,

Acting Administrator.

[FR Doc. 82-22690 Filed 8-17-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PH-FRL 2187-6; PF-288]

Certain Companies; Pesticide, Food, and Feed Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide, food, and feed additive petitions relating to establishment of tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities, and food and feed items.

ADDRESS:

Written comments to the product manager (PM) cited in each specific petition at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Written comments may be submitted while the petitions are pending before the agency. The comments are to be identified by the document control number "[PF-288]" and the specific

petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each petition at the telephone number provided.

SUPPLEMENTARY INFORMATION: EPA gives notice that the following pesticide, food, and feed additive petitions relating to establishment of tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities, food and feed items in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

FAP 2H5352. Dow Chemical Co., PO Box 1706, Midland, MI 48640. Proposes amending 21 CFR 561.98(a) by increasing the established tolerances for the combined residues of the insecticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate and its metabolite 3,5,6-trichloro-2-pyridinol in or on the commodities dried sugar beet pulp from 1.0 ppm to 5.0 ppm and sugar beet molasses from 3.0 ppm to 15.0 ppm. (PM–12 Jay Ellenberger, 703–557–2386.)

PP 2F2689. FMC Corp., Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103. Proposes amending 40 CFR 180.378 by establishing a tolerance for residues of the insecticide permethrin (3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate in or on the raw agricultural commodities sunflowers at 0.2 part per million (ppm) and sunflower hulls at 1.0 ppm. The proposed analytical method for determining residues is using electro-capture (^{63}Ni) gas chromatography. (PM–17, Franklin Gee, 703–557–2690.)

PP 2F2717. Elanco Products Co., 740 South Alabama St., Indianapolis, IN 46285. Proposes amending 40 CFR 180.304 by establishing a tolerance for residues of the herbicide oryzalin (3,5-dinitro-*N*4,*N*4-dipropylsulfanilamide) in or on the raw agricultural commodity potatoes at 0.1 ppm. The proposed analytical method for determining residues is gas liquid chromatography. (PM–25, Robert J. Taylor, 703–557–1800.)

PP 2F2718. Elanco Products Co. Proposes amending 40 CFR 180.304 by establishing a tolerance for residues of the herbicide oryzalin in or on the raw agricultural commodities peppermint hay and spearmint hay at 0.05 ppm. The proposed analytical method for determining residues is gas chromatography with an electron capture detector. (PM–25, Robert J. Taylor, 703–557–1800.)

FAP 2H5360. Elanco Products Co. Proposes amending 21 CFR Part 193 by establishing a regulation permitting residues of the herbicide oryzalin in or on the commodities peppermint oil and spearmint oil at 0.1 ppm. (Robert J. Taylor, 703–557–1800.)

FAP 2H5357. Union Carbide Agricultural Products Co., Inc., PO Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. Proposes amending 21 CFR Part 561 by establishing a regulation permitting residues of the plant growth regulator ethephon (2-chloroethyl)phosphonic acid) in or on the feed items milling fractions of barley and wheat at 5.0 ppm. (PM–25, Robert J. Taylor, 703–557–1800).

(Secs. 408(d)(1), 68 Stat. 512 (7 U.S.C. 136); 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348))

Dated: August 5, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82–22230 Filed 8–17–82; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50580; PH–FRL 2186–3]

Issuance of Experimental Use Permits; Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

275–EUP–26. Issuance. Abbott Laboratories, 14th and Sheridan Rd., North Chicago, IL 60064. This experimental use permit allows the use of 5.0×10^{13} Conidia (CFU) of the fungus *Nomuraea rileyi* on all raw agricultural commodities to evaluate the control of the lepidopterous caterpillar. A total of 500 acres are involved; the program is authorized only in the States of Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Ohio, Pennsylvania, South Carolina, and Texas. The experimental use permit is effective from June 14, 1982 to June 14, 1983. A temporary exemption from the requirement of a tolerance for residues of the active ingredient in or on all raw agricultural commodities has been established. (Franklin Gee, PM 17, Rm. 207, CM#2, (703–557–2690))

275–EUP–34. Issuance. Abbott Laboratories, 14th and Sheridan Rd., North Chicago, IL 60064. This experimental use permit allows the use of 16,000 billion BIUs of the biological insecticide *Bacillus thuringiensis,* Berliner on various crops to evaluate the control of various insects. A total of 5,000 acres are involved; the program is authorized only in the States of California, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, Pennsylvania, South Carolina, Tennessee, Texas, and Vermont. The experimental use permit is effective from June 1, 1982 to June 1, 1983. A temporary exemption from the requirement of a tolerance for residues of the active ingredient in or on all raw agricultural commodities has been established. (Franklin Gee, PM 17, Rm. 207, CM#2, (703–557–2690))

36638–EUP–6. Issuance. Albany International, 110 A St., Needham Heights, MA 02194. This experimental use permit allows the use of 68.2 pounds of the pheromones hexadecenal, Z-7-hexadecenal, Z-9-hexadecenal and Z-11-hexadecenal on cotton to evaluate the control of the *Heliothis zea* (corn earworm). A total of 1,000 acres are involved; the program is authorized only in the State of Arizona. The experimental use permit is effective from June 1, 1982 to June 1, 1983. A permanent exemption from the requirement of a tolerance for residues of the active ingredients in or on cotton has been established. (40 CFR 180.1063). (Franklin Gee, PM 17, Rm. 207, CM#2, (703–557–2690))

100–EUP–69. Issuance. Ciba-Geigy Corporation, P.O. Box 11422, Greensboro, NC 27409. This experimental use permit allows the use of 115.2 pounds of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole on rice grown for seed to evaluate the control of brown blotch, brown spot, leaf smut, narrow brown leaf spot,

sheath blight, sheath rot and spot, and stem rot. A total of 100 acres will be involved each year of the program; the program is authorized only in the State of Arkansas. The experimental use permit is effective from June 14, 1982 to January 1, 1984. This permit is issued with the limitation that harvested rice grain will be destroyed or used for research purposes only and that the rice straw will not be used for feed purposes. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703–557–1900))

100–EUP–72. Issuance. Ciba-Geigy Corporation, P.O. Box 11422, Greensboro, NC 27409. This experimental use permit allows the use of 6,000 pounds of the plant growth regulator 2-chloro-*N*-[2,6-dinitro-4-(trifluoromethyl)phenyl]-*N*-fluorobenzenemethanamine on tobacco for evaluation of sucker control. A total of 5,640 acres are involved; the program is authorized only in the States of Connecticut, Florida, Georgia, Kentucky, Maryland, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Virginia. The experimental use permit is effective from June 23, 1982 to June 23, 1984. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

47872–EUP–1. Issuance. Dr. Ralph Korman, P.O. Box 313, Saco, MT 59261. This experimental use permit allows the use of 16,000 billion BIUs of the biological insecticide *Bacillus thuringiensis*, Berliner var. israelensis on flooded plains and irrigated, Berliner var. israelensis on flooded plains and irrigated grasslands to evaluate the control of mosquito larvae in stages one, two, and three. A total of 4,000 acres are involved; the program is authorized only in the State of Montana. The experimental use permit is effective from June 7, 1982 to June 7, 1984. (Franklin Gee, PM 17, Rm. 2.07, CM#2, (707–557–2690))

2139–EUP–29. Issuance. Nor-Am Agricultural Products, Inc., 350 W. Shuman Blvd., Naperville, IL 60566. This experimental use permit allows the use of 655 pounds of the insecticide chlordimeform hydrochloride in a tank mix with synthetic pyrethroids and vegetable oil on cotton to evaluate the control of cotton bollworms and tobacco budworms. A total of 360 acres are involved; the program is authorized only in the States of Arizona, Georgia, and Texas. Permanent tolerances for residues of the active ingredients in or on cottonseed have been established (40 CFR 180.285, 180.378, 180.379). (Jay Ellenberger, PM 12, Rm. 202, CN#2, (703–557–2386))

707–EUP–100. Issuance. Rohm and Hass Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 168,000 pounds of the fungicides zinc ion and manganese] ethylenebisdithiocarbamate on soybeans to evaluate the control of anthracnose, Cercospora frogeye leafspot, Diaporthe pod and stem blight, downy mildew, purple seed strain, and Septoria brown spot. A total of 10,500 acres will be involved each year of the program; the program is authorized in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from June 23, 1982 to May 31, 1984. A temporary tolerance for residues of the active ingredient in or on soybeans has been established. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703–557–1900))

400–EUP–53. Extension. Uniroyal, Inc., 74 Amity Rd., Bethany, Ct. 06525. This experimental use permit allows the use of 3,330 pounds of the harvest growth regulator (2,3-dihydro-5,6-dimethyl-1,4-dithiin 1,1,4,4-tetraoxide on potatoes and sunflowers to evaluate potato vine desiccation and sunflower seed head desiccation. A total of 4,350 acres are involved; the program is authorized only in the States of Colorado, Idaho, Indiana, Kansas, Maine, Michigan, Minnesota, New York, North Dakota, Ohio, Oregon, South Dakota, Washington, and Wisconsin. The experimental use permit is effective from July 1, 1982 to July 1, 1983. A temporary tolerance for residues of the active ingredient in or on potatoes has been established. This permit is issued with the limitation that sunflower seeds from plants treated with this product must be destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 251, CM#2, (703–557–1800))

20954–EUP–22. Issuance. Zoecon Corporation, 975 California Ave., Palo Alto, CA 94304. This experimental use permit allows the use of 50 pounds of the insecticide N-[2-chloro-4-(trifluoromethyl)phenyl]-*D*-valine (±)-alpha-cyano(3-phenoxy-phenyl)methyl ester on rangelands to evaluate the control of grasshoppers. A total of 125 acres are involved; the program is authorized only in the State of Wyoming. The experimental use permit is effective from June 10, 1982 to June 10, 1983. This permit is being issued with the limitation that none of the treated material will enter the food chain. (Franklin Gee, PM 17, Rm. 207, CM#2, (703–557–2690))

20954–EUP–23. Issuance. Zoecon Corporation, 975 California Ave., Palo Alto, CA 94304. This experimental use permit allows the use of 288.04 pounds of the pheromones (Z,Z)-7,11-hexadecadien-1-01-acetate, (Z,E)-7,11-hexadecadien-1-]-acetate, and the insecticide permethrin on cotton to evaluate the control of the pink bollworm. A total of 560 acres are involved; the program is authorized only in the States of Arizona and California. The experimental use permit is effective from June 10, 1982 to June 10, 1983. A permanent tolerance for residues of the active ingredient permethrin in or on cottonseed has been established (40 CFR 180.378). A permanent exemption from the requirement of a tolerance for residues of the active ingredients (Z,Z)-7,11-hexadecadien-1-01-acetate and (Z,E)-7,11-hexadecadien-1-01-acetate on cottonseed has been established (40 CFR 180.1043). (Franklin Gee, PM 17, Rm. 207, CM#2, (703–557–2690))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: July 30, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82–21699 Filed 8–17–82; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Preparations for the ITU 1983 Region 2 Broadcasting Satellite Service Planning Conference

August 10, 1982.

The FCC RARC–83 Advisory Committee is being reconvened and three meetings are scheduled as follows:

Wednesday, September 8, 1982

Thursday, September 23, 1982

Thursday, October 14, 1982

All three meetings will be held between the hours of 9:30 A.M. and 4:00 P.M. at the Federal Communications Commission, Brown Building, 1200 19th

Street, NW., Room 330, Washington, D.C. Agendas are listed below:

September 8, 1982

1. Adoption of agenda
2. Review CPM results and identify potential problem areas
3. Open discussion on possible solutions to problems noted under Item 2
4. Discussion on response to IFRB requirements questionnaire
5. Establishment of appropriate drafting groups
6. Set schedule for submission of Advisory Committee Report to FCC
7. Other business

September 23, 1982

1. Adoption of agenda
2. Progress reports from drafting groups
3. Open discussion on drafting group reports
4. Appointment of group to assemble final report to FCC
5. Other business

FCC RARC–83 Advisory Committee Meetings

October 14, 1982

1. Approval of agenda
2. Presentation of draft final report
3. Open discussion and approval of final report
4. Other business.

Please note that it is possible that any or all of the three meetings may be extended into the next day if there is unfinished business to be completed.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82–22575 Filed 8–17–82; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee for the 1985 ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing It

August 11, 1982.

Task Group B–1 of Working Group B: Legal Implications

Chairman: Martin Rothblatt (202) 662–5446

Date: Wednesday, September 15, 1982

Time: 9:00 a.m.–12 Noon

Location: Federal Communications Commission, 2025 M Street, N.W., Room 7327, Washington, D.C.

Discussion of Contributions on:

(1) Identification of U.S. and international law relevant to the 1985 Space WARC; and

(2) Legal evaluation of ITU orbit/spectrum planning methods.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82–22577 Filed 8–18–82; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Citicorp; Proposed Acquisition of Fidelity Savings and Loan Association of San Francisco, and Notice of Informal Hearing

Citicorp, New York, New York, a bank holding company within the meaning of the Bank Holding Company Act (the "Act"), has applied for the Board's approval under section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)) and § 224.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), to acquire all of the voting shares of Fidelity Federal Savings and Loan Association of San Francisco, San Francisco, California, a stock Federal savings and loan association. Citicorp will thereby engage in the activity of operating a savings and loan association from offices located in California that serve the areas surrounding those offices. A service corporation subsidiary of Fidelity also provides ancillary services from offices in Hawaii and Nevada.

The Federal Home Loan Bank Board has requested that the Board act expeditiously on the application in view of the emergency nature of the Fidelity situation.

Although the Board has not added the operation of a savings and loan association to the list of nonbanking activities permissible for bank holding companies set forth in § 225.4(a) of the Board's Regulation Y (12 CFR 225.4(a)), the Board has determined by individual order that the operation of a savings and loan association such as Fidelity is closely related to banking.

Interested persons may express their views on the question whether the acquisition of Fidelity would be so closely related to banking as to be a proper incident thereto within the meaning of the Act. In addressing the issue of whether the proposal would be a proper incident to banking, interested persons may comment on whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices."

Any request for a formal hearing on the application must be accompanied by (1) a statement of the reasons why either a written informal hearing would not suffice in lieu of a formal hearing; (2) specific identification of any questions of fact that are in dispute that cannot be resolved through written comments or an informal hearing; (3) a summary of the additional evidence that would be presented at a formal hearing that cannot be presented in writing or at an informal hearing; and (4) a statement indicating how the person commenting would be aggrieved by approval of the proposal.

All written comments on the proposal and any request for a formal hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 2, 1982. In view of the request of the Federal Home Loan Bank Board for expeditious action and the serious financial condititon of Fidelity, a 15-day notice period is reasonable and appropriate.

In addition, in light of the serious financial condition of Fidelity and the request by the Federal Home Loan Bank Board for expeditious action on the application, the Board will receive comments and afford interested persons an opportunity to be heard on this proposal at an informal public hearing on the application to be held at the Federal Reserve Bank of San Francisco, 400 Sansome Street, San Francisco, California, on September 4, 1982, commencing at 9 a.m. The presiding officer at the hearing shall be authorized to administer oaths and to establish time limits for persons wishing to be heard. A person wishing to present evidence at this informal hearing should file with the Secretary of the Board a request to appear at the hearing. The request to present evidence should be received at the Secretary's office in Washington, D.C. 20551, no later than August 31, 1982, and should specify the names of the persons who desire to present evidence, the interest of those persons in the proceeding, and the matters concerning which those persons desire to present evidence.

The application may be inspected at the office of the Board of Governors in Washington, D.C., or at the Federal Reserve Banks of New York or San Francisco.

Board of Governors of the Federal Reserve System, August 16, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-22591 Filed 8-17-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

National Professional Standards Review Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), announcement is made of the following Council meeting:

Name: National Professional Standards Review Council

Date and Time:

September 13, 1982 (10:00 a.m. to 5:00 p.m.)

September 14, 1982 (9:00 a.m. to 12:00 noon)

Place: Auditorium (first floor) HHS North Building, 330 Independence Avenue, S.W., Washington, D.C. 20201

Purpose of the Meeting: The Council was established to advise the Secretary of Health and Human Services on the administration of Professional Standards Review (Title XI, Part B, Social Security Act). Professional Standards Review is the procedure to assure that the services for which payment may be made under the Social Security Act are medically necessary and conform to appropriate professional standards for the provision of quality health care. The Council's agenda will include discussion of a variety of issues relevant to the PSRO program. On August 30, 1982, a tentative agenda will be made available to the public.

The meeting of the Council is open to the public. Public attendance is limited to space available.

Any member of the public may file a written statement with the Council before, during, or after the meeting. To the extent that time permits, the Council Chairperson will allow public presentation of oral statements at the meeting.

All communications regarding this Council should be addressed to Daniel E. Nickelson, National Professional Standards Review Council, Health Standards and Quality Bureau, Dogwood East Building, 1849 Gwynn Oak Avenue, Baltimore, Md., 21207, (301) 594-5033.

Dated: August 6, 1982.

Daniel E. Nickelson,

National Professional Standards Review Council.

[FR Doc. 82-22593 Filed 8-17-82; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

National Arthritis Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Arthritis Advisory Board on September 13, 14, and 15, 1982. The Board will meet at the Boston University School of Medicine, 818 Harrison Avenue, Boston, Massachusetts 02218, from 9:00 a.m. to 12:00 noon on September 13 at the Brigham and Women's Hospital, 75 Francis Street, Boston, Massachusetts 02117, from 1:30 p.m. to 4:00 p.m. The Board will also meet at the Boston Park Plaza, Arlington Street at Park Square, Boston, Massachusetts 02117, from 9:00 a.m. to 12:00 noon on September 15, 1982. The meetings, which will be open to the public, are being held to discuss the Board's activities and to continue the evaluation of the implementation of the long-range plan to combat arthritis. The meetings are also intended to demonstrate activities and programs of these two Multipurpose Arthitis Centers to the Board.

Certain subcommittees of the Board will meet September 14, 1982. Further information, times and meeting locations of the subcommittees may be obtained by contacting Mr. William Plunkett, Executive Director, National Arthritis Advisory Board, P.O. Box 30286, Bethesda, Maryland 20205, (301) 496-1991. The agenda and rosters of the members can also be obtained from his office. Summaries of the meeting may be obtained by contacting Carole A. Peters, Committee Management Office, NIADDK, National Institutes of Health, Room 9A46, Building 31, Bethesda, Maryland 20205, (301) 496-5765.

Dated: August 11, 1982.

Betty J. Beveridge,

National Institutes of Health, Committee Management Officer.

[FR Doc. 82-22522 Filed 8-17-82; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Treatment; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, October 11-12, 1982, Building 31, 6th Floor, "C" Wing, Conference Room 10, National Institutes of Health. This meeting will be open to the public on October 11, 1982, from 8:30 a.m. until 5:00 p.m., and again on October 12, 1982, from 8:30 a.m. until adjournment, to review program plans, contract recompetitions and budget for the DCT program. Attendance by the public will limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on October 11, 1982, from 5:00 p.m. to 7:00 p.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigator, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A-06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Bruce A. Chabner, Acting Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A-52 National Institutes of Health, Bethesda, Maryland 20205 (301/496-4291) will furnish substantive program information.

Dated: August 9, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82-22525 Filed 8-17-82; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Breast Cancer Task Force Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Breast Cancer Task Force Committee, National Cancer Institute, September 23-24, 1982, Linden Hill Hotel, Wimbledon and Grand Prix Rooms, Bethesda, Maryland 20205. The entire meeting will be open to the public from 9:00 a.m. to adjournment on September 23 and from 9:00 a.m. to adjournment on September 24. The meeting will be open to the public on September 23 from 9:00 a.m. to 2:00 p.m. for Review of the Breast Cancer Research Program. From 2:30 p.m. to adjournment on September 23

and from 9:00 a.m. to adjournment on September 24 the committee will divide into two working groups to discuss research projects related to etiology and clinical aspects. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meetings and rosters of committee members, upon request.

Dr. Mary E. Sears, Acting Executive Secretary, Breast Cancer Task Force Committee, National Cancer Institute, Landow Building, Room 8C19, 7910 Woodmont Avenue, Bethesda, Maryland 20205 (301/496–6718) will furnish substantive program information.

Dated: August 11, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82–22520 Filed 8–17–82; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health, National Cancer Institute; Division of Cancer Cause and Prevention Board of Scientific Counselors and Board Ad Hoc Subcommittees; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the Division of Cancer Cause and Prevention Board of Scientific Counselors and its ad hoc Subcommittees on September 28–30, 1982, Building 31, C Wing, Conference Room 10, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205. The Board meeting and the ad hoc Subcommittee on Development of Radiation Tables will be open to the public to discuss committee business as indicated in the notice. Attendance by the public will be limited to space available.

The ad hoc Subcommittee on Laboratory Review will be closed to the public as indicated below in accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Cause and Prevention, National Cancer Institute, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Mr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Cause and Prevention, National Cancer Institute, Building 31, Room 11A04, National Institutes of Health, Bethesda, Maryland 20205 (301/496–6927) will furnish substantive program information.

Name of committee: *Division of Cancer Cause and Prevention Board of Scientific Counselors*
Dates of meeting: September 29–30, 1982
Place of meeting: Building 31, C Wing, Conference Room 10, National Institutes of Health
Open: September 29, 9:00 a.m.—adjournment; September 30, 9:00 a.m.—adjournment
Agenda: Review of concepts for grants, contracts and interagency agreements and review and discussion of the Division budget.

Name of committee: *Division of Cancer Cause and Prevention, Board of Scientific Counselors, ad hoc Subcommittee on Development of Radiation Tables*
Date of meeting: September 28, 1982
Place of meeting: Building 31, C Wing, Conference Room 8
Open: September 28, 9:00 a.m.—adjournment
Agenda: To discuss scientific issues relating to development of radiation-related cancers in persons who have been exposed to radiation.

Name of committee: *Division of Cancer Cause and Prevention, Board of Scientific Counselors, ad hoc Subcommittee on Laboratory Review*
Dates of meeting: September 28, 1982
Place of meeting: Building 31, Room 11A10
Closed session: September 28, 9:00 a.m.—adjournment
Closure reason: To review, discuss and evaluate individual programs and projects conducted within the Division of Cancer Cause and Prevention.

Dated: August 9, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82–22526 Filed 8–17–82; 8:45 am]

BILLING CODE 4140–01–M

National Diabetes Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Diabetes Advisory Board on September 13, 1982, 8:00 a.m. to 5:00 p.m., at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland. The Meeting, which will be open to the public, is being held to discuss the Board's activities and to continue the evaluation of the implementation of the long-range plan to combat diabetes. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the Hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, P.O. Box 30174, Bethesda, Maryland 20814, (301) 496–6045, will provide an agenda and roster of members. Summaries of the meeting may be obtained by contacting Barbara Shapiro, Secretary, National Diabetes Advisory Board, National Institutes of Health, P.O. Box 30174, Bethesda, Maryland 20814, (301) 496–6045.

Dated: August 9, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82–22523 Filed 8–17–82; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Meeting of the National Advisory Eye Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Eye Council, National Eye Institute, September 29 and 30, 1982, Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 9:00 a.m. until approximately noon on Wednesday, September 29, for opening remarks by the Director, National Eye Institute; a discussion of NEI policy on research training; discussions of procedural matters; and presentations by the extramural staff of the Institute.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately noon for the remainder of the day on Wednesday, September 29, and all day on Thursday, September 30, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Carter, Committee Management Officer, National Eye Institute, Building 31, Room 6A03, National Institutes of Health, Bethesda,

Maryland 20205 (301) 496–4903, will provide summaries of meetings and rosters of committee members.

Dr. Ronald G. Geller, Associate Director for Extramural and Collaborative Programs, National Eye Institute, Building 31, Room 6A03, National Institutes of Health, Bethesda, Maryland 20205 (301) 496–4903, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health)

NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular.

Dated: August 9, 1982

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82–22527 Filed 8–17–82; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Institute Board of Scientific Counselors, November 10 and 11, 1982, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7N214, Bethesda, Maryland 20205. This meeting will be open to the public from 9:30 a.m. to 4:00 p.m. November 10 and from 9:30 a.m. to 12 noon on November 11 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 12 noon to adjournment November 11 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496–4236, will provide summaries of the meeting and rosters of the Board members. Substantive program information may be obtained from Dr. Jack Orloff, Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7N214, phone (301) 496–2116.

Dated: August 9, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82–22524 Filed 8–17–82; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Cancellation of Meeting Clinical Applications and Prevention Advisory Committee

Notice is hereby given of the cancellation of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, National Institutes of Health on September 13, 1982 to be held in Conference Room B119 of the Federal Building, 7550 Wisconsin Avenue, Bethesda, Maryland 20205, which was published in the **Federal Register** on June 29, 1982 (47 FR 28160).

Dated: August 11, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82–22519 Filed 8–17–82; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the Interagency Technical Committee (IATC) sponsored by the National Heart, Lung, and Blood Institute, on September 28, 1982, from 9:00 a.m. to 12:30 p.m., Building 31, C Wing, Conference Room 10 at the National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205.

The entire meeting will be open to the public. The Interagency Technical Committee is meeting to examine and coordinate Federal Research activities which concern heart, blood vessel, lung, and blood diseases and blood resources. This meeting will focus on research in the area of pulmonary disease being supported by several IATC member agencies. Attendance by the public will be limited to space available.

For detailed program information, an agenda, list of participants and meeting summary contact: Ms. Sally Breul, Office of Program Planning and Evaluation, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 5A03, 9000 Rockville Pike, Bethesda, MD 20205, (301) 496–5031.

Dated: August 11, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82–22521 Filed 8–17–82; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, September 20–21, 1982, in Building 1, Wilson Hall and Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on September 20 from 8:30 a.m. until 12:30 p.m. in Building 1, Wilson Hall with opening remarks, the Report of the Director, NICHD, and addresses commemorating the 20th anniversary of the Institute. From approximately 2:00 p.m. to 5:00 p.m. the meeting will be held in Building 31, Conference Room 10 with current status reports, the review of the NICHD Human Learning and Behavior Program, and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 21, Bldg. 31, Conference Room 10, from 9:00 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individual associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Council Secretary, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland 20205, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.864, Population Research,

and 13.865, Research for Mothers and Children, National Institutes of Health)

NIH programs are not covered by OMB Circular A-95 because they fit the description of "program not considered appropriate" in section 8(b) (4) and (5) of that Circular.

Dated: August 9, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82-22528 Filed 8-17-82; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the following study sections for September through October 1982, and the individuals from whom summaries of meetings and rosters of committtee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, for review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Grant Inquiries Office, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20205, telephone 301-496-7441 will furnish summaries of the meetings and rosters of committee members.Substantive programs information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	September-October 1982 meetings	Time	Location
Behavioral and Neurosciences 1, Dr. Bertie Woolf, Rm. A23, Tel. 301-496-7286.	Oct. 1	8:30	Holiday Inn, Georgetown, DC.
Behavioral and Neurosciences 2, Dr. Laura Weinstein, Rm. A25, Tel. 301-496-7286.	Sept. 13	8:30	Holiday Inn, Bethesda, MD.
Behavioral and Neurosciences 3, Dr. Bertie Woolf, Rm. A23, Tel. 301-496-7286.	Sept. 17	10:00	Holiday Inn, Bethesda, MD.
Biomedical Sciences 1, Ms. Joan D. Fredericks, Rm. A10, Tel. 301-496-1067.	Oct. 4-5	8:30	Holiday Inn, Georgetown, DC.
Biomedical Sciences 2, Dr. Charles Baker, Rm. A10, Tel. 301-496-7150.	Sept. 24	8:30	Ramada Inn, Bethesda, MD.
Biomedical Sciences 3, Ms. Joan D. Fredericks, Rm. A10, Tel. 301-496-1067.	Sept. 21-22	8:30	Holiday Inn, Georgetown, DC.
Biomedical Sciences 4, Dr. Charles Baker, Rm. A10, Tel. 301-496-7150.	Sept. 21	8:30	Ramada Inn, Bethesda, MD.
Clinical Sciences 1, Dr. Lynwood Jones, Rm. A19, Tel. 301-496-7510.	Sept. 20-21	9:00	Holiday Inn, Georgetown, DC.
Clinical Sciences 2, Dr. Bernice Lipkin, Rm. A19, Tel. 301-496-7477.	Sept. 23	8:30	Westwood Bldg., Rm. 428, Bethesda, MD.
Clinical Sciences 3, Dr. Lynwood Jones, Rm. A19, Tel. 301-496-7510.	Sept. 13-14	9:00	Holiday Inn, Georgetown, DC.
Clinical Sciences 4, Dr. Bernice Lipkin, Rm. A19, Tel. 301-496-7477.	Sept. 16	8:30	Westwood Bldg., Rm. 428, Bethesda, MD.

Dated: August 9, 1982.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393-13.396, 13.837-13.844, 13.846-13.878, 13.892, 13.893, National Institutes of Health, HHS)

NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 82-22529 Filed 8-17-82; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. William T. Adams, at (202) 395-7340.

Title: 43 CFR 4130.1, Grazing Application—Preference Summary and Transfer

Bureau Form Number: 4130-1a

Frequency: Occasionally

Description of Respondents: Permittees or lesees authorized to graze livestock on public lands

Annual Responses: 5,000

Annual Burden Hours: 1,250

Bureau Clearance Officer (alternate): Linda Gibbs, (202) 653-8853

August 12, 1982.

James M. Parker,

Acting Director.

FR Doc. 82-22474 Filed 8-16-82; 8:45 am]

BILLING CODE 4310-84-M

Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. William T. Adams, at (202) 395-7340.

Title: 43 CFR 4130.1, Grazing Application, Supplemental Information

Bureau Form Number: 4130-1b

Frequency: Occasionally

Description of Respondents: Permittees or lesees authorized to graze livestock on public lands

Annual Responses: 5,000

Annual Burden Hours: 1,250

Bureau Clearance Officer (alternate): Linda Gibbs, (202) 653-8853

August 12, 1982.

James M. Parker,

Acting Director.

FR Doc. 82-22482 Filed 8-17-82; 8:45 am]

BILLING CODE 4310-84-M

[OR 6409]

Oregon; Termination of Classification for Multiple Use Management

By order of the Oregon State Director, Bureau of Land Management, which was published in the **Federal Register** on December 18, 1970 (35 FR 19193), 17,724.00 acres of public lands under the jurisdiction of the Bureau of Land Management were classified for multiple use management pursuant to the Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411–18) and the regulations in 43 CFR Part 2460. The lands are located in Grant County, Oregon.

2. Pursuant to 43 CFR 2461.5(c)(2), the classification is terminated in its entirety upon publication of this notice in the **Federal Register.**

3. At 9:30 a.m., on September 20, 1982, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands involved will be open to operation of the public land laws. All valid applications received at or prior to 9:30 a.m., on September 20, 1982 shall be considered as simultaneously filed at that time. Subject to the provisions of existing withdrawals, the lands have been and continue to be open of the mining laws and minerals leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 6, 1982.

Paul M. Vetterick,

Acting State Director.

[FR Doc. 82-22472 Filed 8-17-82; 8:45 am]

BILLING CODE 4310-84-M

[OR 4668]

Oregon; Termination of Classification for Multiple Use Management

1. By order of the Oregon State Director, Bureau of Land Management, which was published in the **Federal Register** on June 18, 1970 (35 FR 10042) 130,960.00 acres of public lands under the jurisdiction of the Bureau of Land Management were classified for multiple use management pursuant to the Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411–18) and the regulations in 43 CFR Part 2460. The lands are located in Grant County, Oregon.

2. Pursuant to 43 CFR 2461.5(c)(2), the classification is terminated in its entirety upon publication of this notice in the **Federal Register.**

3. At 9:30 a.m., on September 20, 1982, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands involved will be open to operation of the public land laws. All valid applications received at or prior to 9:30 a.m., on September 20, 1982, shall be considered as simultaneously filed at that time. Subject to the provisions of existing withdrawals, the lands have been and continue to be open to operation of the mining laws and minerals leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 6, 1982.

Paul M. Vetterick,

Acting State Director.

[FR Doc. 82-22473 Filed 8-17-82; 8:45 am]

BILLING CODE 4310-84-M

Salt Lake District, Utah; Grazing Management Environmental Impact Statement (EIS) for Tooele Planning Area, Utah

AGENCY: Bureau of Land Management, Salt Lake District, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management, Salt Lake District, intends to prepare a Grazing Management Environmental Impact Statement (EIS) for the Tooele Planning Area in northwestern Utah. The area consists of all of Tooele County plus small portions of Salt Lake, Box Elder, and Utah Counties. Within the planning area are 2,001,166 acres of BLM-administered Public Lands; 262,123 acres of State lands; 1,700,581 acres of other Federal lands; and 584,740 acres of private lands. The EIS will analyze grazing management alternatives for approximately 1,550,000 acres of Public Land. Approximately 360,000 acres of barren mud/salt flats and about 90,000 acres of rangeland included in other grazing systems will not be analyzed in the Tooele EIS.

The general issues which have been identified at the time are: (1) Competitive forage demands (livestock, wildlife, wild horses, and watershed protection); (2) habitat/range/watershed improvement; (3) use of water sources and riparian zones; (4) management of critical habitat for important wildlife species; (5) introduction of wildlife into historic ranges; (6) wood products harvest; and (7) fire management.

The disciplines to be represented on the interdisciplinary team are Range Conservationist, Wildlife Biologist, Recreation Planner, Realty Specialist, and Geologist.

A public open house for scoping will be held September 21, 7:30 A.M. to 4:00 P.M. at the Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah.

The purpose of the meeting is to identify additional issues and alternatives to be considered in the Grazing Management EIS. Information discussed in the EIS will be used by the Salt Lake District Manager in making grazing decisions for the Tooele Planning Area.

Other public participation activities will include requests for written comments, review of the Draft EIS and a 30-day protest period after the Final EIS has been released. The dates, times, and locations of public participation activities will be announced through the media and mailings to interested parties prior to each activity.

Dennis Oaks, Team Leader for the Tooele Grazing Management EIS, may be contacted for further information at the Salt Lake District Office, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119. Documents relevant to the planning and EIS process can be examined at the Salt Lake District during regular business hours, 7:30 A.M. to 4:00 P.M. Monday through Friday.

Frank W. Snell,

District Manager.

[FR Doc. 82-22471 Filed 8-17-82; 8:45 am]

BILLING CODE 4310-84-M

Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. Jeffrey Hill at (202) 395–7340.

Title: 43 CFR 4130.1, Grazing Application, Authorized Representative
Bureau Form Number: 4130–1c
Frequency: Occasionally
Description of Respondents: Permittees or lessees authorized to graze livestock on public lands
Annual Responses: 2,000
Annual Burden Hours: 167

Bureau Clearance Officer (alternate):
Linda Gibbs, (202) 653–8853

August 12, 1982.

James M. Parker,

Acting Director.

[FR Doc. 82–22483 Filed 8–17–82; 8:45 am]

BILLING CODE 4310–84–M

[Competitive Sale—I–17736]

Idaho Falls District, Realty Action; Public Land in Bear Lake County, Idaho

SUMMARY: The following described land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than the fair market value of $17,400 for Tract #1 and $17,600 for Tract #2.

Boise Meridian, Idaho

T. 16 S., R. 45 E.,
Tract #1—Sec. 11: E½SE¼; 80 acres
Tract #2—Sec. 23: W½SE¼; 80 acres

The land, which will be sold at public auction by competitive bidding, has not been used and is not required for any federal purpose. It does not complement BLM programs and the location and physical characteristics of the tracts, along with the private ownership of adjoining lands, make it difficult and uneconomical to mange as public land. Disposal would not have any significant effect on resource values and would best serve the public interest.

A patent for the land, when issued, will be subject to the following conditions:

1. A right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 USC 945.

2. All minerals will be reserved to the United States as required by Section 209(a) of the Federal Land Policy and Management Act of 1976, 43 USC 1719.

3. All valid existing rights and reservations of record.

The sale will be held at the Bear Lake County Courthouse, Paris, Idaho, on Thursday, October 28, 1982, at 2:00 p.m.

Bidding Information and Instructions:

Bidder Qualifications: The Federal Land Policy and Management Act requires that bidders must be citizens of the United States 18 years of age or over, or, in the case of a corporation, be subject to the laws of any state or the United States. Bids may be made by a principal (the one desiring to purchase the land) or his duly qualified agent.

Bid Standards: No bid will be accepted for less than the appraised fair market value of: Tract #1—$17,400; Tract #2—$17,600. Bids must be for all the land in the specified tract.

Method of Bidding: Bids may be made either by mail or personally at the sale. Bids sent by mail will only be considered if received by the Bureau of Land Management, Soda Springs Resource Area Office, 490 East 2nd South, Soda Springs, Idaho 83276, prior to 12 noon on October 28, 1982. Bids sent in by mail must be in sealed envelopes accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management for not less than one-fifth of the amount of the bid. The sealed bid envelopes must be marked in the lower left-hand corner, "Sealed Bid, Public Land Sale I–17736. Sale to be October 28, 1982." If to or more valid sealed bids in the same amount are received and they are the high bid, the determination of which bid is to be considered the highest bid shall be by a drawing. The drawing, if required, shall be held immediately following the opening of the bids. The highest qualifying sealed bid shall then be announced.

All sealed bids received in the Soda Springs Resource Area Office will be taken to the Bear Lake County Courthouse and opened at 2 p.m. on the day of the sale.

Oral bids will be received immediately after all sealed bids have been opened and the highest sealed bid is announced. The highest sealed bid will be the base for oral bids. All oral bids must be made in increments or not less than $50.00. Sealed bidders present at the sale may also make oral bids. The highest bid price, either sealed or oral, will establish the sale price. If the highest bid is an oral bid, the successful bidder will be required to pay immediately one-fifth of the high bid price by cash, personal check, money order, bank draft, or any combination of these.

Final details: The successful high bidder, whether it is by sealed or oral bid, will be required to submit full payment for the balance of the bid within 30 days from the date of the sale. Failure to submit such payment within the 30 day period shall result in the cancellation of the sale and the bid deposit shall be forfeited. All unsuccessful sealed bids will be returned within 30 days from the sale date. If no bids for the land, either sealed or oral, are received on the sale date, the sale will be adjourned until the next Thursday at the same hour and place and continued on each succeeding Thursday, until the lands are sold as specified in this notice or the sale is otherwise terminated.

Further Information/Inquiries: Detailed information concerning this sale, including the planning documents and Environmental Assessment, is available for review in the Soda Springs Resource Area Office at the address indicated above. For the period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, Idaho Falls District Manager, 940 Lincoln Road, Idaho Falls, Idaho 83401. Any adverse comments will be evaluated by the Idaho State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director this realty action will become the final determination of the Department of Interior.

Dated: August 6, 1982.

O'dell A. Frandsen,

District Manager.

[FR Doc. 82–22487 Filed 8–17–82; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Superior Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that The Superior Oil Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 4078, Block 39, High Island Area, offshore Texas.

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, Louisiana 70002, Phone (504) 837–4720, Ext. 228.

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: August 11, 1982.

John L. Rankin,

Acting Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-22484 Filed 8-17-82; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; SONAT Exploration Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that SONAT Exploration Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 1525, Block 222, 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, Louisiana 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: August 11, 1982.

John L. Rankin,

Acting Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-22485 Filed 8-17-82; 8:45 am]

BILLING CODE 4310-31-M

National Park Service

Lewis and Clark National Historic Trail Advisory Council; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Lewis and Clark National Historic Trail Advisory Council will be held. The Council Chairperson and Advisory Council members will meet September 11, 1982, beginning at 9:00 a.m. at the Sheraton Hotel, 27 North 27th Street, Billings, Montana.

The Council was established by the Act on November 10, 1978, 92 Stat. 3467, 16 U.S.C. 1244, to meet and consult with the Secretary of the Interior on matters relating to the administration and development of the Lewis and Clark National Historic Trail.

The members of the Council are as follows:

Mr. J. L. Dunning (Chairperson)
Mr. Phil F. Knerl
Mr. Victor Ecklund
Mr. Clarence H. Decker
Mr. Joseph A. McElwain
Mrs. Shirley Tanzer
Mr. Rudy Clements
Mr. Charles T. Coston
Mr. William M. Lockwood
Mr. Jefferson L. Miller
Mr. Frank Whetstone
Mrs. Alice Fryslie
Mr. Edmund B. Thornton
Mr. Sherry Fisher
Mr. Larry Jochims
Mr. Willard Burney
*Dr. John Caylor
Mr. Jim Cooper
Mr. John G. Lepley
Mr. Walter Hjelle
Mr. Dayton W. Canaday
*Dr. E. G. Chuinard
Mr. Ralph Rudeen
Mr. Wilber P. Werner
Ms. Edna Knight
Mr. David E. Brown
Mr. Jack Hayne
Mr. Irving Anderson
Mr. James L. McCreight
Mrs. Sheila Robinson
Mr. Don K. Weilmunster

Matters to be discussed at the meeting will include issues related to the implementation of the recently approved Comprehensive Management Plan for the Lewis and Clark National Historic Trail and the role of the Council in administration of the trail.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from Bill Farrand, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone (402) 221-3371 (FTS 864-3371). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 4 weeks after the meeting.

Dated: August 6, 1982.

Randall R. Pope,

Acting Regional Director, Midwest Region.

[FR Doc. 82-22506 Filed 8-17-82; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 82-19129, at page 30882 in the issue of Thursday, July 15, 1982, on page 30883, first column under **Volume No. OP2-146** in the paragraph designated "MC 52793", line 2, correct "BERKINS" to read "BEKINS".

BILLING CODE 1505-01-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** of 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. 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 to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–136

Decided: August 4, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 94201 (Sub-203), filed July 29, 1982. Applicant: BOWMAN TRANSPORTATION, INC., P.O. Box 17744, Atlanta, GA 30316. Representative: Gerald D. Colvin, Jr., 601–09 Frank Nelson Bldg., Birmingham, AL 35203, (205) 251–2881. Transporting *general commodites* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 127031 (Sub-7), filed July 14, 1982. Applicant: ALASKA COAST TRANSPORT, INC., 4501 West Marginal Way Southwest, P.O. Box 3963, Seattle, WA 98124. Representative: Alan F. Wohlstetter, 1700 K Street, N.W., Washington, DC 20006, (202) 833–8884. Transporting *general commodities* (except classes A and B explosives), (1) between points in Seattle, WA, on the one hand, and, on the other, points in AK; (2) between points in AK, and (3) between points in the commercial zone of Seattle, WA.

MC 143701 (Sub-38), filed July 28, 1982. Applicant: K.P.H. TRANSPORTATION, 510 South Mathilda Ave., Suite 7, Sunnyvale, CA 94086. Representative: James D. Keller (same address as applicant), (408) 736–6655. 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 145301 (Sub-18), filed July 26, 1982. Applicant: R.E.M. TRANSPORT CO., INC., Building No. 431, Raritan Center, Edison, NJ 08817. Representative: Brian S. Stern, 5411–D Backlick Rd., Springfield, VA 22151, (703) 941–8200. Transporting *general commodites* (except Classes A and B explosives, household goods and commodites in bulk), between points in AR, MO, OK and TX.

MC 147661 (Sub-4), filed July 28, 1982. Applicant: H & W TRUCKING, INC., 108 E. Walnut St., Cardington, OH 433;5. Representative: E. H. van Deusen, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017, (614) 889–2531. Transporting *transportation equipment,* between points in Lowndes County, GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 154050 (Sub-6), filed July 27, 1982. Applicant: CARRIER SYSTEMS INTERNATIONAL MOTOR FREIGHT, INC., Sellers and O'Brien Streets, Kearny, NJ 07032. Representative: Harry J. Jordan, Suite 502, Solar Building, 1000 16th Street, NW., Washington, DC 20036, (202) 783–8131. Transporting *general commodities* (except classes A and B explosives, and household goods), between ports in MA, CT, NY, RI, NJ, DE MD, IL, VA, PA, NC, SC, GA, FL, AL, MS, LA, TX, OH, MI, IN, WI, and MN, on the one hand, and, on the other, points in the U.S. in and east of MN, IA, MO, KS, OK, and TX. Condition: Issuance of a certificate in this proceeding is subject to the coincidental cancellation, at applicant's written request, of Certificate No. MC 154050 Sub-2.

MC 156121 (Sub-1), filed July 29, 1982. Applicant: KOPF TRUCKING, INC., 18470 Victoria Drive, Goshen, In 46526. Representative: Theodore Polyforoff, Suite 301, 1307 Dolley Madison Blvd., McLean, Va 22101, (703) 892–4924. Tranporting *general commodities* (except classes A and B explosives, commodities in bulk and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Troyer's Poultry, Inc., of Goshen, NY.

MC 156331 (Sub-3), filed July 29, 1982. Applicant: MD ASSOCIATES, 3220 Phillips Highway, Jacksonville, FL 32207. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202, (904) 632–2300. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between those points in the U.S. in and east of ND, SD, NE, KS, OK and NM.

MC 160180 (Sub-1), filed July 27, 1982. Applicant: HARVARD LEASING COMPANY, 4217 East 49th Street, Cleveland, OH 44125. Representative: Earl N. Merwin, 85 East Gay Street, Columbus, OH 43215, (614) 224–3161. Transporting (1) *general commodities* (except classes A and B explosives, and household goods), between points in OH, and (2) *metal products, machinery, and building materials,* between points in DE, IL, IN, KY, MD, MI, NJ, NY, OH, PA and WV.

MC 160390, filed July 29, 1982. Applicant: JOHN J. MULDOON, d.b.a. J. & P. TRANSPORTATION, R.D. 1, P.O. Box 123A, Tower City, PA 17980. Representative: John J. Muldoon (same address as applicant), (215) 632–8634. Transporting *foodstuffs,* between points in PA, on the one hand, and, on the other, points in NY, NJ, DE, MD, OH and DC.

MC 161310, filed April 13, 1982. Applicant: HAMILTON-DRAGTON-HAMILTON, INC., 105 Spring Way, Woodstock, GA 30188. Representative: Robert M. Hamilton (same address as applicant) (404) 928–2841. Transporting *general commodities* (except household goods), between points in the U.S. Condition: To the extent that this certificate authorizes the transportation of classes A and B explosives, it shall expire 5 years from the date of issuance.

MC 162201, filed May 26, 1982, previously noticed in the Federal Register on June 11, 1982. Applicant: CORO-MEX, 1023 Flora Ave., Coronado, CA 92118. Representative: Leticia Flores

Avila (same address as applicant), (714) 435–3076. Transporting *passengers and their baggage,* in the same vehicle as passengers, beginning and ending at Coronado, CA, and extending to the ports of entry on the International Boundary line located in CA between the U.S. and Mexico.

Note.—This republication corrects the territorial description.

MC 163070, filed July 21, 1982. Applicant: SMITH TOURS, INC., P.O. Box 1460, 3033 U.S. 41 North, Henderson, KY 42420. Representative: Maxwell A. Howell, 1100 Investment Bldg., 1511 K St., NW., Washington, DC 20005, (202) 783–7900. Transporting *passengers and their baggage* in the same vehicle with passengers, in charter and special operations, between points in the U.S. (including AK and HI), under continuing contract(s) with W.T. Smith, d.b.a. Smith Tours, of Henderson, KY.

MC 163170, filed July 28, 1982. Applicant: LINTON ENTERPRIZES, 107 Park Ave., P.O. Box 185, Lincoln Park, NJ 07035. Representative: Christopher E. Linton (same address as applicant), (201) 696–3234. Transporting *transportation equipment,* between points in the U.S. (except AK and HI.

MC 163191, filed July 29, 1982. Applicant: AIRPORT BUS OF BAKERSFIELD, INC., 1625 24th St., Bakersfield, CA 93301. Representative: Christopher Ashworth, 1925 Century Park East, Suite 1250, Los Angeles, CA 90067, (213) 277–1981. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, between points in Kern County, CA, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY.

Volume No. OP2–184

Decided: August 10, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 14743 (Sub-31), filed July 30, 1982. Applicant: E. L. POWELL & SONS TRUCKING CO., INC., 3777 South Jackson, P.O. Box 356, Tulsa, OK 74101. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101, 703–893–3050. Transporting *petroleum, natural gas and their products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Simonsen Chemical Company, of Cabool, MO.

MC 128593 (Sub-3), filed July 30, 1982. Applicant: ROBERT TRINSKI, d.b.a., ARROW MARINE TRANSPORT, 100 North Route 12, Fox Lake, IL 60020. Representative: Albert A. Andrin, 180 North LaSalle St., Chicago, IL 60601, 312–332–5106. Transporting (1) *commodities in bulk,* and (2) *pre-cast concrete products, and materials and supplies* used in the manufacture and distribution of pre-cast concrete products, between points in IL, WI, and IN.

MC 145282 (Sub-6), filed July 29, 1982. Applicant: FALCON TRANSPORT, INC., P.O. Box K, Bird-in Hand, PA 17505. Representative: James E. Brown, 36 Btunswick Rd., Depew, NY 14043, 716–681–7190. 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 162463, filed June 23, 1982. Applicant: MELVIN W. FRIESZ, d.b.a. RAINBOW BUS LINES, P.O. Box 688, Hayden Lake, ID 83835. Representative: Melvin W. Friesz (same address as applicant), 208–772–2952. Transporting *passengers and their baggage and package express in the same vehicle with passengers,* between Hayden Lake, Coeur d'Alend and Post Falls, ID and Spokane, WA.

MC 162902, filed July 12, 1982. Applicant: WILLIAM HERSKOVITZ, d.b.a. BJ INTERNATIONAL COMPANY REG'D., 143 West Park, Dollard-des-Ormeaux, Montreal, Quebec, Canada, H9B 2E2. Representative: Adrien R. Paquette, c/o Paquette & Associates, 200 St. James St., S. 900, Montreal, Quebec, Canada, 514–842–1864. Transporting *waste or scrap materials not identified by industry producing,* between the ports of entry on the international boundary line between the U.S. and Canada, on the one hand, and, on the other, points in NY, MA and NJ.

Volume No. OP4–298

Decided: August 9, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC117036 (Sub-26), filed July 29, 1982. Applicant: H. M. KELLY, INC., P.O. Box 87, New Oxford, PA 17350. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740, (301) 797–6060. Transporting *wearing apparel, machinery, leather* and *fiberboard,* between points in PA, KY, WV, and IN, on the one hand, and, on the other, points in El Paso County, TX.

MC 159686 (Sub-1), filed August 2, 1982. Applicant: DONALD R. BLACKMON TRUCKING, INC., 12610 SE. 172nd, Boring, OR 97009. Representative: Lawrence V. Smart, Jr., 419 NW. 23rd Ave., Portland, OR 97210. Transporting *food and related products,* between points in OR, WA, CA, NV, AZ, ID and UT.

MC 161196, filed August 2, 1982. Applicant: JACK L. OLSEN, INC., P.O. Box 7197, Duluth, MN 55807. Representative: Robert D. Gisvold, 1600 TCF Tower, 121 S 8th St., Minneapolis, MN 55402, (612) 333–1341. Transporting *metal products, transportation equipment and machinery,* between points in Carlton, Lake and St. Louis Counties, MN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161956, filed August 2, 1982. Applicant: JOHN W. BIRDWELL, d.b.a. BIRDWELL TRUCKING, Gail Route, Box 280, Big Spring, TX 79720. Representative: Kenneth R. Hoffman, 1600 W. 38th St., Suite 410, Austin, TX 78731, (512) 451–7409. Transporting *plastic materials, synthetic resins, and nonvulcanizable elastomers,* between points in Howard County, TX, on the one hand, and, on the other, points in Webb County, TX and Sedgwick County, KS.

MC 162806, filed July 30, 1982. Applicant: ATENHAN TRUCKING, INC., P.O. Box 683, Deshler, NE 68340. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501, (402) 475–6761. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of machinery and metal products, between points in the U.S., under continuing contract(s) with Reinke Manufacturing Company, Inc., of Deshler, NE, and Geneva Tube, Inc., of Geneva, NE.

MC 163196, filed July 30, 1982. Applicant: LEROY HARRINGTON, d.b.a. ANTELOPE VALLEY TRUCKING COMPANY, 37900 N. 6th St., Palmdale, CA 93550. Representative: Marsha N. Honda, 1545 Wilshire Blvd., Suite 606, Los Angeles, CA 90017, (213) 483–4700. Transporting *building materials, machinery, minerals, and clay, concrete, glass and stone products,* between points in CA, NV, AZ, OR, UT and WA.

MC 163206, filed July 30, 1982. Applicant: HOLMES BUS SERVICE, INC., 412 Heitzman Rd., Davidsonville, MD 21035. Representative: Oscar M. Holmes (same address as applicant), (301) 261–4105. Transporting *passengers and their baggage,* in charter, and special operations, between Alexandria, VA, DC, and points in Fairfax County, VA, and MD, on the one hand, and, on the other points in the U.S. (except AK and HI).

MC 163216, filed July 30, 1982. Applicant: CLM FREIGHT LINES, INC., P.O. Box 19184, Indianapolis, IN 46219. Representative: Michael D. McCormick, 1301 Merchants Plaza, Indianapolis, IN 46204, (317) 638–1301. Transporting

general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in IN, on the one hand, and, on the other, points in AR, CA, FL, GA, IA, IL, IN, KY, MD, MI, MN, MO, NC, NJ, NY, OH, PA, SC, TN, TX, VA, WI, and WV.

Volume No. OP4–300

Decided: August 10, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and William S. (Member Fisher not participating.)

MC 45656 (Sub-29), filed August 3, 1982. Applicant: ANDERSON TRUCK LINE, INC., P.O. Box 1196, Lenoir, NC 28645. Representative: Dan E. Anderson (same address as applicant) (704) 728–9236. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, GA, SC, TN, NC, VA, MD, DE, and DC.

MC 50307 (Sub-107), filed August 2, 1982. Applicant: INTERSTATE DRESS CARRIERS, INC., 215 County Ave., Secaucus, NJ 07094. Representative: Gerald W. Eskow (same address as applicant), (201) 330–0700. Transporting *such commodities* as are dealt in by department stores, between points in ME, NH, VT, MA, RI, CT, NY, PA, NJ, MD, DE, VA, WV, OH, IN, IL, MO, KY, TN, NC, SC, GA, FL, AL, MS, AR, LA, OK, TX, and DC.

MC 63837 (Sub-11), filed August 3, 1982. Applicant: DIGGINS & ROSE, INC., 3 Sagamore Park Rd., Hudson, NH 03051. Representative: James M. Burns, 1383 Main St., Suite 413 Springfield, MA 01103, (413) 781–8205. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Digital Equipment Corporation, of Northboro, MA.

MC 142167 (Sub-7), filed July 30, 1982. Applicant: MICHAELSEN TRUCK LINE, INC., 1619 S. Garfield, Mason City, IA 50401. Representative: Steven C. Shoenebaum, 601 Locust, 1100 Carriers Bldg., Des Moines, IA 50309, (515) 283–2076. Transporting *coal,* between points in Crawford County, WI, on the one hand, and, on the other Mason City, IA, under continuing contract(s) with The pillsbury Company, of Prairie du Chien, WI.

MC 143776 (Sub-55), filed July 12, 1982, previously noticed in the **Federal Register** issue of July 27, 1982, and republished this issue. Applicant: C.D.B., INCORPORATED, 155 Spaulding, S.E., Grand Rapids, MI 49506. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933, (517) 482–2400. 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).

Note.—The purpose of this republication is to correct the commodity description.

MC 147877 (Sub-3), filed August 2, 1982. Applicant: SANFORD M. HEDRICK, JR., d.b.a., HEDRICK TRUCKING CO., P.O. Box 769, Darlington, SC 28532. Representative: George W. Clapp, P.O. Box 836, Taylors, SC 29687, (803) 244–9314. 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), under continuing contract(s) with James River Corporation of Virginia, of Richmond, VA, and its subsidiaries (1) Curtis Paper Division, of Newark, DE, and Ypsilanti, MI, (2) James River/Curtis, of Adams, MA, (3) James River/Fitchburg, Inc., of Fitchburg, MA, (4) James River/Gilco, Inc., of Perrysburg, OH, (5) James River/Massachusetts, Inc., of Fitchburg, MA, (6) James River/Otis, Inc., of Jay, ME, (7) James River/Pepperell, Inc., of East Pepperell, MA, (8) James River/Rochester, Inc., of Rochester, MI, (9) James River Corporation, of Kalamazoo, MI, Berlin NH, and Bristol, PA, (10) James River Corporation/Dixie/Northern, of Naheola, AL, Fort Smith, AR, Newnan and St. Marys, GA, Lexington, KY, Halsey, OR, Chambersburg and Easton, PA, Darlington, SC, Sunnyside, WA, and Ashland, Green Bay, Neenah and Wausau, WI, (11) James River Graphics, of South Hadley, MA, (12) James River Paper Company, of Richmond, VA, (13) Minerva Wax Paper Company, of Minerva, OH, (14) Riegel Products Corporation, of Milford, NJ, and (15) Superior Match Company, Division of James River Corporation, of Chicago, IL.

MC 149497 (Sub-30), filed August 2, 1982. Applicant: HAUPT CONTRACT CARRIERS, INC., P.O. Box 1023, Wausau, WI 54401. Representative: Robert A. Wagmam (same address as applicant), (715) 359–2907. 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), under continuing contract(s) with Combustion Engineering, Inc.-Industrial Products Group, of Valley Forge, PA.

MC 154426 (Sub-2), filed August 2, 1982. Applicant: DITZFELD TRANSFER, INC., 104 West Pacific, Sedalia, MO 65301. Representative: Jeremiah D. Finnegan, 4225 Baltimore, Kansas City, MO 64111, (816) 753–1122. Transporting *beverages,* between points in the U.S., under continuing contract(s) with Whitaker & Company, Inc., of Sedalia, MO.

MC 154887, filed July 30, 1982. Applicant: DON BASS TRUCKING, INC., 2044 W. Willow Rd., Palatine, IL 60067. Representative: Donald S. Mullins, 1033 Graceland Ave., Des Plaines, IL 60016, (312) 298–1094. Transporting *clay, concrete, glass or stone products,* under continuing contract(s) with Filter Products Corporation, of Lake Zurich, IL; (2) *machinery* and *metal products,* under continuing contract(s) with Neuero Corporation, of W. Chicago, IL, and Palatine Welding Company, of Palatine, IL; (3) *petroleum and coal products; pulp, paper and related products,* and *rubber and plastic products,* under continuing contract(s) with Pace Warehouse Corporation, of Elk Grove Village, IL; (4) *food and related products,* under continuing contract(s) with Seneca Foods Corporation, of Marion, NY; (5) *rubber and plastic products,* under continuing contract(s) with Step Products, Inc., of Woodstock, IL; and (6) *lumber and wood products; machinery;* and *metal products,* under continuing contract(s) with Upright Scaffolding, of Itasca, IL, between points in the U.S. (except AK and HI).

MC 160237, filed August 2, 1982. Applicant: MANCUSO TRANSPORTATION, INC., 23 River St., Box 404, Carbondale, PA 18407. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517, (717) 344–8030. Transporting (1)(a) *waste or scrap materials not identified by industry producing,* and (b) *such commodities* as are dealt in or used by grocery stores, between points in Lackawanna County, PA, on the one hand, and, on the other one, points in the U.S. (except AK and HI); and (2) *building materials,* between points in Lackawanna County, PA, on the hand, and, on the other hand, points in MA, RI, CT, NY, NJ, MD, DE, VA, WV, OH, MI, IN, IL, NC, and SC.

MC 161887, filed July 30, 1982. Applicant: RALPH E. LOWERY, d.b.a. REL TRUCKING, 5817 S. Dock St., R.R. #2, Newaygo, MI 49337. Representative: D. Richard Black, Jr., 285 James St., P.O. Box 638C, Holland, MI 49423, (616) 399–3400. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of food products, between points in the U.S., under

continuing contract(s) with Bil-Mar Foods, Inc., of Zeeland, MI.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-22505 Filed 8-17-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 288]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: August 11, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR Part 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, Ewing, and Williams.

Agatha L. Mergenovich,

Secretary.

FF-339 (Sub-3)X, filed July 30, 1982, Applicant: TOWNE INTERNATIONAL FORWARDING, INC., P.O. Box 17005, San Antonio, TX 78217. Representative: Zoe Ann Pace, One World Trade Center, Suite 2373, New York, NY 10048. Sub 2: (1) Broaden used household goods, used automobiles, and unaccompanied baggage to "household goods, furniture and fixtures, transportation equipment, and unaccompanied baggage" and general commodities (except used household goods, unaccompanied baggage, used automobiles, and commodities in bulk), in containers to "general commodities (except household goods and commodities in bulk)"; (2) change one-way to radial authority; and (3) remove the following restrictions: (a) transportation of export and import traffic; (b) ports of authority; and (c) ex-water.

MC 14708 (Sub-3)X, filed August 3, 1982. Applicant: FIELD VIEW FARM TRANSPORTATION, INC., 707 Derby Turnpike, Orange, CT 06477. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th Street, N.W., Washington, DC 20004. No. MC-140000, Sub 1, 4F, 7 and 8 permits and No. MC-14708 Sub 1 certificate broaden to (1) (a) "chemicals and related products" from manufactured fertilizers, insecticides, weed killing compounds, dry chlorinated lime, calcium salts, and sodium chloride, (b) "food and related products" from birdseed, (c) "machinery" from hand sprayers, and (d) "miscellaneous products of manufacturing" from outdoor bird feeders, Sub-1; (e) "food and related products" from groceries and malt beverages, Sub-4F; (f) "chemicals and related products" from fertilizers and pesticides, Sub-7; (g) "pulp, paper and related products" from paper and paper boxes; "apparel or other finished textile products" from shirts, cut piece goods and shirt piece materials; and "food and related products" from groceries, Sub 1 certificate (2) New Haven and Fairfield Counties, CT from New Haven, West Haven, Hamden and Bridgeport; Essex, Bergen, Hudson, and Middlesex Counties, NJ from Newark, Jersey City, Carteret and Perth Amboy, Sub 1, (3) to radial authority, Sub 1 and (4) between points in the United States, under continuing contract(s) with named shipper, all permits.

MC 109064 (Sub-47)X, filed July 27, 1982. Applicant: TEX-O-KAN TRANSPORTATION COMPANY, INC., 3301 East Loop 820 South, Ft. Worth, TX 76112. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062. Lead and Sub Nos. 3, 4, 7, 8, 9, 11, 12, 15, 16, 19, 20, 21, 23, 25, 28, 32, 34, 37, 38, 40, 42, and 43 (A) Broaden machinery, equipment, materials, and supplies used in or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and oilfield equipment and supplies, and machinery, materials, equipment, and supplies used in, or in connection with, the construction in, operation, repair, servicing, maintenance, and dismantling of pipe lines, including the stringing and picking up thereof, and earth drilling machinery and equipment, and machinery, equipment, materials, supplies, and pipe incidental to, or used in, or in connection with, in lead, 3, 19, 32 to "machinery, mercer commodities and metal products"; clay and plastic, water and sewer pipes and valves fitings and materials in Subs 4 to "clay concrete, glass or stone products, rubber or miscellaneous plastic products"; machinery, equipment, materials, and supplies used in or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, other than pipeline used for the transmission of natural gas, petroleum and their products and by-products, water or sewerge, restricted to the transportation of shipments moving to or from pipeline rights of way to "such articles as are dealt in or used by manufacturers, distributors or users of pipe lines" in Sub 7; plastic pipe, valves and fittings and materials used in the installation thereof, to "rubber or miscellaneous plastic products" in Sub 8; fertilizer, dry to "chemicals or allied products" in Sub 8; machinery, equipment, materials, and supplies used in or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by products, and machinery to "machinery, clay, concrete, glass or stone products, mercer commodities, metal products, rubber or plastic products" in Sub 9; machinery, equipment, materials, and supplies used in or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, other than pipelines used for the transmission of water or sewerage, including the stringing and picking up of pipe, to "machinery, clay, concrete, glass or stone products, metal

products, rubber or plastic products" in Sub 11; fertilizer (except fertilizers derived from petroleum) to "chemicals or allied products" in Sub 12; plastic pipe, plastic tubing, plastic conduit, valves, fittings, compounds, joint sealer, bonding cement, primer, coating, thinner, and accessories used in the installation of such products to "rubber or plastic products, chemicals or allied products" in Sub 15; zinc articles, metal articles and iron and steel articles to "metal products" in Subs 16, 23, 25, 34, 38, 40 and 43; machinery, materials, supplies and equipment incidental to, or used in, the construction, development, operations, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum, and machinery, equipment, materials, and supplies used in, or in connection with, the discovery, development, production, refining, manufactue, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, not including the stringing or picking up of pipe in connection with pipelines, to "mercer commodities and metal products" in Sub 19; pipe other than oilfield pipe as described in Mercer Extension, 74 MCC 459, to "metal products" in Sub 20; plastic pipe, plastic tubing, plastic conduit, valves, fittings, compounds, joint sealer, bonding cement, primer, coating thinner, vinyl building products and accessories used in the installation of such products, to "rubber or plastic products, chemicals or allied products" in Sub 21; plastic pipe to "rubber or plastic products" in Sub 28; bentonite clay and lignite to "coal, clay, concrete, glass, or stone products" in Sub 37, part 1; lignite to "coal" in Sub 37, part 2; (B) to two-way radial authority 4, 8, 12, 15, 16, 20, 21, 23, 25, 28, 34, 37, 38, 40, 42, 43; (C) cities change to counties: Mineral Wells, TX to Palo Pinto County, TX in Sub 4; Corsicana, TX to Navarro County, TX in Sub 8; Corpus Christi, TX to Coryell County in Sub 16; Houston, TX, to Harris County in Sub 16; Galveston, TX to Galveston County, TX in Sub 16; Gainesville, TX to Cooke County, TX in Sub 20; McPherson KS to McPhearsonCounty, TX in Sub 21; Waco, TX to McLennan County, TX in Sub 21; Lone Star, TX to Montgomery County, TX in Sub 23; Grapeland, TX to Houston County, TX in Sub 34; Conroe, TX to Montgomery County, TX in Sub 40; Midlothian, TX to Ellis County, TX in Sub 42; Sterling, IL, Rocky Falls, IL to Whiteside County, IL, 43; (D) remove plansite restriction in Subs 8, 20, 28, 37, 40, 42, 43; (E) removing the following restrictions: Originating at or destined to pipeline rights-of-way, in Sub 11; limitation of service to actual oilfields, size and weight limitation and limitation of shipments from one dealer or refinery to another dealer or refinery, or from a dealer to a refinery, or from a refinery to a dealer in Sub 19; delete originating at or destined to limitation in Subs 20, 23, 25, and 43.

[FR Doc. 82-22494 Filed 8-17-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service in can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-193

The following applications were filed in Region I. Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 163097 (Sub-1-1TA), filed August 6, 1982. Applicant: AMCAN TRANSPORT, INC., 300 Hopkins Street, P.O. Box 869, Buffalo, NY 14240. Representative: S. John Spina (same as applicant). *General commodities in cargo containers (except commodities in bulk) restricted to traffic having a prior or subsequent movement by water* between ports of entry on the U.S./CD border located on the Niagara, Detroit, and St. Clair Rivers, on the one hand, and, on the other, points in MI, IL, IN, IA, MD, NJ, NY, OH, PA, WI, and WV. Supporting Shipper(s): CAST of North America, Ltd., 4150 St. Catherine West, Montreal, CD H3Z 2R8; Manchester Liners; Limited, No. 1 Yonge Street, Suite 2210, Toronto, Ontario, CD M5E 1P4.

MC 135732 (Sub-1-1TA), filed July 23, 1982. Applicant: AUBREY FREIGHT LINES, INC., 1200 Route 23, Butler, NJ 07405. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier:* irregular routes: *General commodities (except Classes A and B explosives, household goods, and commodities in bulk)* between points in IL and IN, on the one hand, and, on the other, points in the US (except AK and HI), under continuing contract(s) with Backhauls, Inc., South Holland, IL. Supporting Shipper: Backhauls, Inc., P.O. Box 246, South Holland, Il 60473.

MC 134806 (Sub-1-36TA), filed August 2, 1982. Applicant: B-D-R TRANSPORT, INC., Vernon Drive, P.O. Box 1277, Brattleboro, VT 05301. Representative: Edward T. Love, 4401 East West Highway, Suite 404, Bethesda, MD 20814. *Contract carrier:* irregular routes: *Woodstove accessories* between Hancock, NH, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, and WY, under continuing contract(s) with Sandhill Wholesale, Inc., Peterboro, NH. Supporting shipper: Sandhill Wholesale, Inc., P.O. Box 460, Peterboro, NH 03458.

MC 148141 (Sub-1-3TA), filed August 2, 1982. Applicant: GOODY PRODUCTS, INC., 969 Newark Turnpike, Kearny, NJ 07032. Representative: William Jacobs (same as applicant). *Contract carrier:* irregular routes: *Expanded plastic cups and containers ranging in size from 3.5 oz. to 32 oz., Non expanded plastic tumblers 5 oz. to 14 oz., Non expanded plastic lids,* between points in the U.S. (except AK and HI), under continuing contract(s) with Thompson Industries Co., Phoenix, AZ. Supporting shipper: Thompson Industries Co., 2501 E. Magnolia Street, Phoenix, AZ 85034.

MC 15846 (Sub-1-2TA), filed August 5, 1982. Applicant: MONARCH MARKET STREET CORPORATION, 505 Long

Beach Blvd., Long Beach, NY 11561. Representative: William J. Augello, Esq., Augello, Pezold & Hirschmann, P.C., 120 Main Street, Huntington, NY 11742. *Contract carrier:* irregular routes: *Malt beverages and empty beverage containers* between all points in the U.S. under continuing contract(s) with The Lion, Inc., Wilkes-Barre, PA; Island Park Beverage Co., Island Park, NY; Monarch Long Beach Corp., Long Beach, NY. Supporting shipper(s): The Lion, Inc., 700 North Pennsylvania Ave., Wilkes-Barre, PA 18703; Island Park Beverage Corp., 4290 Industries Place, Island Park, NY 11558; Monarch Long Beach Corp., 505 Long Beach Blvd., Long Beach NY 11561.

MC 56324 (Sub-1–3TA), filed August 3, 1982. Applicant: HENRY S. STEFANIK, d.b.a. NORTHSIDE TRUCKING CO., Morgan Avenue, Westfield, MA 01085. Representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 01103. *Contract carrier:* irregular routes: *Electrical and electronic equipment and parts, computers, data processing components and materials and supplies used in the manufacture, processing and distribution, sale and use of such commodities,* between points in the U.S., under continuing contract(s) with Digital Equipment Corporation, Maynard, MA. Supporting shipper: Digital Equipment Corporation, 146 Main Street, Maynard, MA 01754.

MC 163286 (Sub-1–1TA), filed August 6, 1982. Applicant: ROWELL & WATSON CO., INC., 547 Central Avenue, Dover, NH 03820. Representative: James M. O'Donnell (same as applicant). *Contract carrier:* irregular routes: Petroleum product between points in ME and NH under continuing contract(s) with Getty Refining & Marketing Co., Portland, ME. Supporting shipper: Getty Refining & Marketing Co., Box 1050, Portland, ME 04101.

MC 162587 (Sub-1–2TA), filed August 6, 1982. Applicant: JOHN F. SULLIVAN, d.b.a. SULIVAN ENTERPRISES, Aldis Street, P.O. Box 997, St. Albans, VT 05478. Representative: John F. Sullivan (same as applicant). *Contract carrier:* irregular routes: *General commodities (except Class A & B explosives, household goods, and commodities in bulk)* between points in VT on the one hand, and, on the other, points in VT, NY, MA, CT, RI, under continuing contract(s) with Central Vermont Railway, Incorporated, St. Albans, VT. Supporting shipper: Central Vermont Railway Incorporated, Federal Street, St. Albans, VT 05478.

MC 163285 (Sub-1–TA), filed August 6, 1982. Applicant: J. M. WASHBURN-LINDER CO., INC., 12 Trip Street, Framingham, MA 01701. Representative: Samuel L. Watts, T.D.S., Inc., 54 Middlesex Turnpike, Burlington, MA 02154. *Contract carrier:* irregular routes: *Chemicals and related products* between points in MA on the one hand, and, on the other, points in Cook County, IL, under continuing contract(s) with Ventron Divison of Thiokol, Danvers, MA and Savogran Co., Norwood, MA. Supporting shipper(s): Ventron Division of Thiokol, 154 Andover Street, Danvers, MA 01923; Savogran Co., 259 Lenox Street, Norwood, MA 02062.

MC 147585 (Sub-1–3TA), filed August 6, 1982. Applicant: DICK WELLER, INC., Shoham Road, P.O. Box 313, Warehouse Point, CT 06088. Representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 01103. *Electrical supplies and flexible air distribution duct tubing* between the facilities of Wiremold, Inc., on the one hand, and, on the other, points in the U.S., except AK and HI. Supporting shipper: Wiremold Co., Woodland Street, West Hartford, CT 06110.

MC 150526 (Sub-1–5TA), filed August 6, 1982. Applicant: YARMOUTH LUMBER, INC., North Street, Box 46, Yarmouth, ME 04096. Representative: William H. Phipps (same as applicant). *Paper and paper products, including waste paper,* between all points in the U.S. east of the Mississippi River. Supporting shipper(s): Barry N. Springer, Inc., 36 Greene Street, Sabattus, ME 04280; Goodman Paper, P.O. Box 601, Portland, ME.

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street, N.E., Atlanta, GA 30309.

MC 161911 (Sub-3–2TA), filed August 9, 1982. Applicant: NORDIC EXPRESS, INC., 3737 U.S. Alt. 19 N., Holiday, FL 33590. Representative: M. Craig Massey, 211 East Lime Street, Post Office Drawer 1109, Lakeland, FL 33802. *Bananas, plantains, and coconuts,* between points in FL on the hand, and, on the other hand, points in IL, IN, OH, MI, MN, WI, KY, TN, MO, IA, NC, SC, AL, GA, AR, NY, PA, MS, and LA. Supporting shipper: Pandol Bros., Inc., 500 S.E. 16th Street, Ft. Lauderdale, FL 33316; Turbana Banana Corp., 1322 N. 13th Street, Tampa, FL 33602.

MC 119917 (Sub-3–12TA), filed August 9, 1982. Applicant: DUDLEY TRUCKING COMPANY, INC., 724 Memorial Drive, S.E., Atlanta, GA 30316. Representative: David A. Modlinski (same address as applicant). *Toilet preparations,* between the commercial zones of Denton, Dallas, Houston, TX; New Orleans, LA; Atlanta, GA; Knoxville, Morristown, Johnson City, Nashville, Kingsport, Oakridge, Maryville and Bristol, TN; Charlotte, Raleigh, Greensboro, Winston Salem and Asheville, NC. Supporting shipper: Sally Beauty Company, Inc., 4920 Jefferson Highway, P.O. Box 10218, Jefferson, LA 70181.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-22493 Filed 8-17-82; 8:45 am]

BILLING CODE 7035-01-M

[Second Revised I.C.C. Order No. 82 Under Service Order No. 1344]

Rerouting Traffic

To: The Baltimore and Ohio Railroad Company; The Chesapeake and Ohio Railway Company; Norfolk and Western Railway Company; Green Bay and Western Railroad Company; Chicago and North Western Transportation Company; and Soo Line Railroad Company; Rerouting Traffic.

In the opinion of J. Warren McFarland, Agent, the Ann Arbor Railroad System (Michigan Interstate Railway Company—Operator) is unable to transport traffic via the car ferry between Kewaunee and Manitowoc, Wisconsin, and Frankfort, Michigan, due to the termination of its Designated operations for the State of Michigan. As this matter is considered to be outside the scope of a single railroad as provided by Ex Parte No. 376, this action by the Commission is necessary. This order is revised to clarify the procedures for rerouting traffic under authority of this order and the required notification to shippers.

It Is Ordered

(a) *Rerouting traffic.* The Ann Arbor Railroad System (AA) (Michigan Interstate Railway Company—Operator) being unable to transport promptly all traffic via the car ferry between Kewaunee and Manitowoc, Wisconsin, and Frankfort, Michigan, due to the termination of its Designated operations between those points (See AA Embargo 2–82, Amendment 4, 7/2/82), that line's named connections are authorized to reroute any traffic routed via the points indicated. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. All traffic accepted for movement via this routing must be rerouted in accordance with this order

and will not be subject to diversion or other charges beyond those covered by paragraph (d) of this order. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Notification to shippers.* Each originating carrier accepting traffic to be rerouted in accordance with this order, shall notify each shipper at the time each shipment accepted and, to the best of its ability, shall furnish to such shipper the new routing provided for under this order.

(c) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered. Further, due to the refusal of certain carriers to accept traffic in reroute, originating carriers are required to verify that the carrier to effect the rerouting and named in this order has the concurrence of a carrier to which the traffic may be diverted.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 12:01 a.m., August 9, 1982.

(g) *Expiration date.* This order shall expire at 11:59 p.m., September 30, 1982, unless otherwise modified, amended or vacated.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., August 5, 1982.

Interstate Commerce Commission.

J. Warren McFarland,

Agent.

[FR Doc. 82-22501 Filed 8-17-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-215)]

Burlington Northern Railroad Company Exemption for Supplement to Contract Tariff ICC-BN-C-0038 (Lumber and Related Articles)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the supplement referred to in Burlington Northern's petition filed July 31, 1982, may become effective on one day's notice. This exemption may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the Federal Register.

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Tom Smerdon, (202) 275-7277.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101(a) or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following conditions:

This grant neither shall be construed to mean that the Commission has approved the contract for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to determine its lawfulness.

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

(49 U.S.C. 10505)

Decided: August 11, 1982.

By the Commission, Division 1, Commissioners Sterrett, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-22496 Filed 8-17-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29989]

Genesee and Wyoming Railroad Company; Securities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11301, the proposed issuance of a $200,000 note, payable in quarterly installments over a 10-year period, and having an interest rate of 15 percent per annum. Proceeds of the note will be used to finance the purchase of 13.9 miles of a recently abandoned line of the Consolidated Rail Corporation located in Livingston and Genesee Counties, NY.

DATES: This exemption is effective on September 17, 1982. Petitions for reconsideration must be filed by September 7, 1982. Petitions for stay must be filed by August 30, 1982.

ADDRESSES: Send pleadings to:

(1) Section of Finance, Room 5349, Interstate Commerce Commission, Washington, DC 20423;

(2) Petitioner's representative, James B. Gray, Jr., 700 Midtown Tower, Rochester, NY 14604, (716) 232-6500

Pleadings should refer to Finance Docket No. 29989.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: For further information, see the decision served concurrently in Finance Docket No. 29989. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th and Constitution Ave., NW, Washington, DC 20423; or call (202) 289-4357 in the DC metropolitan area; or (800) 424-5403 Toll-free outside the DC area.

Decided: August 11, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-22498 Filed 8-17-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29986]

Louisville and Nashville Railroad Company; Trackage Rights Over Illinois Central Gulf Railroad Company Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 11343 the proposed trackage rights agreement granting the Louisville and Nashville Railroad Company the right to operate over 3.67 miles of Illinois Central Gulf Railroad Company track between Sullivan and New Lebanon, IN.

DATES: Exemption effective on September 17, 1982. Petitions for reconsideration of this action must be filed by September 7, 1982. Petitions for stay must be filed by August 27, 1982.

ADDRESSES: Send pleadings to:
(1) Section of Finance, Room 5349, Interstate Commerce Commission, Washington, D.C. 20423.
(2) Petitioner's representative: R. Lyle Key, Jr., Louisville and Nashville Railroad Company, 500 Water Street, Jacksonville, FL 32202, (904) 359–1251.
Pleadings should refer to Finance Docket No. 29986.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T. S. Infosystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423 or call 289–4357 (D.C. Metropolitan Area) or toll-free 800–424–5403.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82–22499 Filed 8–17–82; 8:45 am]
BILLING CODE 7035–01–M

[Ex Parte No. 387 (Sub-214)]

Southern Pacific Transportation Company Exemption for Contract Tariffs ICC–SP–C–0141 and ICC–SP–C–0142 (Newsprint Paper)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tariffs may become effective on one day's notice. This exemption may be revoked if protests are filed.

DATES: Protests are due, within 15 days of publication in the Federal Register.

ADDRESSES: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7278.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101(a) or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following condition:

This grant neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness.

By separate petitions, the Southern Pacific, (SP), requests an order protecting the confidentiality of information contained in two profered Appendices to the petition; or in the alternative, the SP requests the information be returned and not placed in the public file of this proceeding. As we stated in a previous SP exemption request, Ex Parte No. 387 (Sub-No. 184), such information is not necessary to show cause for granting an exemption of this nature. Accordingly, the material will be returned and has not been considered in the present proceeding. The motion for a protective order is denied. Petitioner should note that not only is this material not required to grant the exemption request, but consideration of the accompanying motions hinders the expeditious handling of such exemption requests.

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

(49 U.S.C. 10505)

Decided: August 12, 1982.

By the Commission, Division 2, Commissoners Andre, Gilliam, and Taylor. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82–22495 Filed 8–17–82; 8:45 am]
BILLING CODE 7035–01–M

[Ex Parte No. 3807 (Sub-211)]

Union Pacific Railroad Company Exemption for Contract Tariff ICC–UP–C–0068 (Coal)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Provisional exemptions are granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tariff may become effective on one day's notice. This exemption may be revoked if protests are filed.

DATES: Protests are due within 15 days of the publication in the Federal Register.

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Tom Smerdon, (202) 275–7277.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following conditions:

This grant neither shall be construed to mean that the Commission has approved the contract for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to determine its lawfulness.

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

(49 U.S.C. 10505)

Decided: August 12, 1982.

By the Commission, Division 1, Commissioners Sterrett, Simmons, and Gradison.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82–22497 Filed 8–17–82; 8:45 am]
BILLING CODE 7035–01–M

[No. 38856]

Ward Transport, Inc.—Petition for Exemption From Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioner, Ward Transport, Inc., a motor contract carrier, has requested exemption from the requirements in 49 U.S.C. 10702, 10761, and 10762 that it file with the Commission schedules of rates and

charges. The sought relief is provisionally granted.

DATES: Comments are due by September 2, 1982. The sought relief will become effective September 17, 1982, unless, in response to comments filed, the Commission issues a further decision withdrawing this relief.

ADDRESS: An original and 15 copies of comments should be sent to: Section of Rates, Interstate Commerce Commission, Room 5340, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7277.

SUPPLEMENTARY INFORMATION: The operation for which petitioner seeks exemption from the tariff filing requirements is the nationwide transportation of general commodities (except classes A and B explosives, and household goods) under contract(s) with the Wycon Chemical Company. The Commission granted this operating authority in No. MC–113624 (Sub-No. 89), published in 47 FR 12400 (march 23, 1982). This authority became effective May 21, 1982.

Section 10702(b) of the Interstate Commerce Act requires contract carriers to file with the Commission actual and minimum rates for the transportation they provide. Section 10761 prohibits transportation without a tariff on file with the Commission, and section 10762 sets forth general tariff requirements including contract carrier authority to file only minimum rates. Each of these sections authorizes the Commission to grant relief to contract carriers when relief is consistent with the public interest and the transportation policy of section 10101. 49 U.S.C. 10702(b), 10761(b) and 10762(f).

Petitioner, in essence, states that the administrative and financial burden of complying with the rate filing requirements would result in higher rates to the shipper than if it were allowed instead simply to incorporate rules and rates into its contract as an appendix. Petitioner also offers to provide a copy of the complete contract with Wycon to interested parties upon request.

In No. 38749, *UTF Carriers, Inc.—Petition for Exemption from Tariff Filing Requirements under 49 U.S.C. 10761(b)*, decided May 28, 1982 (not printed), the Commission recently granted an exemption without the requirement that the carrier furnish a copy of the contract to interested parties. Since the offer to make rates available appears to be based solely on a perception that the petition might be denied without this feature, which has been clarified by the Commission to the contrary, and since the petition is predicated on a desire to avoid all unnecessary costs of doing business in a regulated environment, we will consider the petition as though the offer had not been made.

Petitioner's request is a legitimate one. We see no reason to deny the carrier and the shipper the savings to be realized from a tariff filing exemption. It appears that the requirement that this carrier file schedules is not in the public interest and that relief will promote the transportation policies of 49 U.S.C. 10101.

We therefore provisionally grant the sought exemption. If we receive timely filed adverse comments, we will issue a further decision addressing them and deciding whether this tentative approval ought to be made final.

This decision would not appear to have significant effect on either the quality of the human environment or conservation of energy resources. However, comments may be submitted on these issues.

(49 U.S.C. 10702(b), 10761(b) and 10762(f))

Decided: August 10, 1982.

By the Commission, Division 2, Commissioners Adre, Gilliam, and Taylor. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–22500 Filed 8–17–82; 8:45 am]

BILLING CODE 7035–01–M

Rerouting Traffic

[Revised I.C.C. Order No. 83 Under Service Order No. 1344]

To: Chesapeake and Ohio Railway; Grand Trunk Western Railroad Co.; Michigan Northern Railway Co., and Soo Line Railroad Company; Rerouting Traffic.

In the opinion of J. Warren McFarland, Agent, the Detroit and Mackinac Railway Company is unable to transport promptly all traffic offered for movement via Straits Car Ferry between St. Ignace and Mackinaw City, Michigan, because the car ferry is out of service. As this matter is considered to be outside the scope of a single railroad as provided by Ex Parte No. 376, this action by the Commission is required.

It Is Ordered

(a) *Rerouting traffic.* The Detroit and Mackinac Railway Company being unable to transport promptly all traffic offered for movement via Straits Car Ferry between St. Ignace and Mackinaw City, Michigan, because the car ferry is out of service, those lines named above are authorized to reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. All traffic accepted for movement via this routing must be rerouted in accordance with this order and will not be subject to diversion or other charges beyond those covered by paragraph (d) of this order. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting. This order vacates Reroute Orders DM 1–82 and MN 1–82. Further, this revision removes Consolidated Rail Corporation, at its request, as a carrier authorized to reroute traffic.

(b) *Notification to shippers.* Each originating carrier accepting traffic to be rerouted in accordance with this order, shall notify each shipper at the time each shipment is accepted and, to the best of its ability, shall furnish to such shipper the new routing provided for under this order.

(c) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered. Further, originating carriers are required to verify that the carrier to effect the rerouting and named in this order has the concurrence of a carrier to which the traffic may be diverted.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said agent shall be rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 12:01 a.m., August 9, 1982.

(g) *Expiration date.* This order shall expire at 11:59 p.m., September 30, 1982, unless otherwise modified, amended or vacated.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., August 6, 1982.

Interstate Commerce Commission.

J. Warren McFarland,

Agent.

[FR Doc. 82-22504 Filed 8-17-82; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-126]

Certain Handbags, Luggage, and Brief Cases; Investigation

AGENCY: International Trade Commission.

ACTION: Instititutions of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 12, 1982, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of FHL Accessories, Inc., 1 East 33rd Street, New York, New York 10016. A supplement to the complaint was filed on July 27, 1982. The amended complaint (hereinafter the complaint) alleges unfair methods of competition and unfair acts in the importation of certain hand-carried luggage into the United States, or in their sale, by reason of alleged (1) common law trademark infringement, (2) false designation of source or (3) unfair competition. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue a permanent exclusion order or a permanent cease and desist order.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 11, 1982, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain handbags, luggage, and brief cases into the United States, or in their sale, by reason of alleged (1) common law trademark infringement, (2) false designation of source or (3) unfair competition, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: FHL Accessories Inc., 1 East 33rd Street, New York, New York 10103.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Sinai S.A., Astengo 4621, Montevideo, Uruguay

Yen Sheng, 64 Hoi Yeun Road, Kwun Tong, Kowloon, Hong Kong

Edison Brothers Stores, Inc., 400 Washington Avenue, P.O. Box 14020, St. Louis, Missouri 63178

(c) Jeffrey Neeley, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 132, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation, and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR § 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0176.

FOR FURTHER INFORMATION CONTACT: Jeffrey Neeley, Esq., Unfair Import Investigations Division, Room 132, U.S. International Trade Commission, telephone 202-523-0115.

By order of the Commission.

Issued: August 13, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-22537 Filed 8-17-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-120]

Certain Silica-Coated Lead Chromate Pigments; Amendment of Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Amendment of notice of investigation.

SUMMARY: The Commission has granted a motion to amend the notice of investigation in the above-captioned investigation to add the following companies, alleged to be in violation of section 337, as respondents, and as parties upon which all papers are to be served:

Nichimen Corporation 11-1 Nikonbashi 3-Chome, Chuo-Ku, Tokyo 103, Japan

Nichimen America, Inc., 1200 Travis #630, Houston, Texas 77002

SUPPLEMENTARY INFORMATION: This investigation is being conducted under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and concerns alleged unfair trade practices in the importation into and sale in the United States of certain silica-coated lead chromate pigments by reason of alleged infringement of U.S. Letters Patent 3,639,133.

The motion to amend the notice of investigation (Motion No. 120-3) was not opposed by any of the parties and was supported by the Commission investigative attorney. The presiding

officer has recommended (Order No. 5) that the motion be granted.

Copies of the Commission's action and order and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Gracia M. Berg, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–1626.

By order of the Commission.

Issued: August 9, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–22538 Filed 8–17–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–108]

Certain Vacuum Bottles and Components Thereof; Hearing on the Presiding Officer's Recommendation and on Relief, Bonding, and the Public Interest, and the Schedule for Filing Written Submissions

AGENCY: International Trade Commission.

ACTION: The scheduling of a public hearing and written submissions in investigation No. 337–TA–108, Certain Vacuum Bottles.

Notice is hereby given that the presiding officer has issued a recommended determination that there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the unauthorized importation into and sale in the United States of certain vacuum bottles that are the subject of the Commission's investigation. Accordingly, the recommended determination and the record of the hearing have been certified to the Commission for review and a Commission determination. Interested persons may obtain copies of the nonconfidential version of the presiding officer's recommendation (and all other public documents on the record of the investigation) by contacting the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 161, Washington, D.C. 20436, telephone 202–523–0161.

Commission Hearing

The Commission will hold a public hearing on September 20, 1982, in the Commission's Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m. The hearing will be divided into two parts. First, the Commission will hear oral arguments on the presiding officer's recommended determination that a violation of section 337 of the Tariff Act of 1930 exists. Second, the Commission will hear presentations concerning appropriate relief, the effect that such relief would have upon the public interest, and the proper amount of the bond during the Presidential review period in the event that the Commission determines that there is a violation of section 337 and that relief should be granted. These matters will be heard on the same day in order to facilitate the completion of this investigation within time limits established under law and to minimize the burden of this hearing upon the parties.

Oral Arguments

Any party to the Commission's investigation or any interested Government agency may present an oral argument concerning the presiding officer's recommended determination. That portion of a party's or an agency's total time allocated to oral argument may be used in any way the party or agency making argument sees fit, i.e., a portion of the time may be reserved for rebuttal or devoted to summation. The oral arguments will be held in the following order: complainant, respondents, Government agencies, and the Commission investigative attorney. Any rebuttals will be held in this order: respondents, complainant, Government agencies, and the Commission investigative attorney. Persons making oral argument are reminded that such argument must be based upon the evidentiary record certified to the Commission by the presiding officer.

Oral Presentations on Relief, Bonding, and the Public Interest

Following the oral arguments on the presiding officer's recommendation, parties to the investigation, Government agencies, public-interest groups, and interested members of the public may make oral presentations on the issues of relief, bonding, and the public interest. This portion of the hearing is quasi-legislative in nature; presentations need not be confined to the evidentiary record certified to the Commission by the presiding officer, and may include the testimony of witnesses. Oral presentations on relief, bonding, and the public interest will be heard in this order: complainant, respondents, Government agencies, the Commission investigative attorney, public-interest groups, and interested members of the public.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) an order which could result in one or more respondents' being required to cease and desist from engaging in unfair methods of competition or unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in hearing presentations which address the form of relief, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of relief, it must consider the effect of that relief upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers.

If the Commission finds that a violation of section 337 has occurred and orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in hearing presentations concerning the amount of the bond, if any, which should be imposed.

Time Limit for Oral Argument and Oral Presentation

Parties and Government agencies will be limited to a total of 30 minutes (exclusive of time consumed by questions from the Commission or its advisory staff) for making both oral argument on violation and oral presentations on remedy, bonding, and the public interest. Persons making only oral presentations on remedy, bonding, and the public interest will be limited to 10 minutes (exclusive of time consumed by questions from the Commission and its advisory staff). The Commission may in its discretion expand the aforementioned time limits upon receipt of a timely request to do so.

Written Submissions

In order to give greater focus to the hearing, the parties to the investigation and interested Government agencies are encouraged to file briefs on the issues of violation (to the extent they have not already briefed that issue in their written exceptions to the presiding officer's recommended determination), remedy, bonding, and the public interest. The complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or proposed cease and desist orders for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, bonding, and the public interest. Written submissions on the question of violation must be filed not later than the close of business on August 30, 1982; written submissions on the questions of redmey, bonding, and the public interest must be filed not later than the close of business on September 7, 1982. During the course of the hearing, the parties may be asked to file posthearing briefs.

Notice of Appearance

Written requests to appear at the Commission hearing must be filed with the Office of the Secretary by September 13, 1982.

Additional Information

The original and 14 true copies of all briefs on violation must be filed with the Office of the Secetary not later than August 30, 1982; the original copy and 14 true copies of all briefs on remedy, bonding, and the public interest must be filed with the Office of the Secretary not later than September 7, 1982. Any person desiring to discuss confidential information or to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the presiding officer. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents or arguments containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written sumbissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the **Federal Register** of October 29, 1981, 46 FR 53543.

FOR FURTHER INFORMATION CONTACT:

William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0499.

By order of the Commission.

Issued: August 10, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–22535 Filed 8–17–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–108]

Certain Vacuum Bottles and Components Thereof; Request for Comments Regarding Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Request for public comment on proposed termination of investigation based on a settlement agreement.

SUMMARY: The settlement agreement would result in the termination of this investigation as to respondent Kenco Incentives, Inc. (Kenco). This notice requests comments from the public on the proposed termination of Kenco within thirty (30) days of publication of this notice in the **Federal Register.**

DATES: Comments will be considered if received on or before September 17, 1982. They should conform with § 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), and should be addressed to Kenneth R. Mason, Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and concerns alleged unfair trade practices in the importation into and sale in the United States of certain vacuum bottles and components thereof. Notice of the institution of the investigation was published in the **Federal Register** of October 29, 1981 (46 FR 53543).

Complainant, Union Manufacturing Co. (Union), and respondent Kenco have moved jointly for termination of this investigation as to Kenco. The Commission investigative attorneys have filed a response to the motion which supports the termination. On June 23, 1982, the presiding officer recommended that the joint motion be granted.

Settlement Agreement

The settlement agreement states that between September 1981 and January 1982, Kenco imported 37,500 vacuum bottles alleged to infringe complainant's trademark. Further, Kenco is not currently importing the vacuum bottles described in the complaint. The agreement provides for the termination of Civil Action No. CV. 82–0483 in the United States District Court for the Middle District of Pennsylvania between Kenco and Union. The agreement then states:

3. Kenco will not import into the United States those vacuum bottles described in the complaint which are alleged to be infringing a trademark owned by Union or other vacuum bottles which employ trademarks which are confusingly similar to those alleged in the complaint to be owned by Union unless and until such time as there is a final decision by the U.S. International Trade Commission that the vacuum bottles do not infringe any trademark owned by Union.

4. All damages for infringement by Kenco for the sale of the 37,500 vacuum bottles described above are forgiven by Union.

5. Union and Kenco shall sign and file the joint motion (annexed hereto as Exhibit C) to terminate the I.T.C. Investigation No. 337–TA–108 as to Kenco.

6. The parties hereto shall be responsible for their own respective legal fees and costs.

7. This Agreement shall be binding on the parties hereto and on their respective affiliates, subsidiaries, or other entities of either party which are controlled by such party, their heirs, successors, and assigns.

Written Comments Requested

In order to discharge its statutory obligation to consider the public interest, the Commission seeks written comments from interested persons regarding the proposed termination of this investigation based on the settlement agreement on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States, and (4) U.S. consumers. All written comments must be filed with the Secretary to the Commission no later than September 17, 1982. In addition, pursuant to 19 CFR 210.14(a)(2), the Commission has requested comments from the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs Service.

Additional Information

The original and 14 copies of all written submissions must be filed with the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161. Any person desiring to submit a document (or portion thereof) to the Commission in

confidence must request *in camera* treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons the Commission should grant such treatment. The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0359.

By order of the Commission.

Issued: August 13, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–22536 Filed 8–17–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–179 Through 181 (Preliminary)]

Hot-Rolled Stainless Steel Bar, Cold-Formed Stainless Steel Bar, and Stainless Steel Wire Rod From Brazil; Determinations

Determinations

On the basis of the record [1] developed in investigation No. 701–TA–179 the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671(a)), that there is a reasonable indication that an industry in the United States is threatened with[6] material injury by reason of imports of hot-rolled stainless steel bar, provided for in item 606.9005 of the Tariff Schedules of the United States Annotated (TSUSA), which are alleged to be sublidized by the Government of Brazil.[2]

On the basis of the record [1] developed in investigation No. 701–TA–180 the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of cold-formed stainless steel bar, provided for in item 606.9010 of the TSUSA, which are alleged to be subsidized by the Government of Brazil.[2]

On the basis of the record [1] developed in the subject investigation No. 701–TA–181 the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of stainless steel wire red, provided for in items 607.2600 and 607.4300 of the TSUSA, which are alleged to be subsidized by the Government of Brazil.[3]

Background

On June 16, 1982, petitions were filed with the Department of Commerce by counsel for Al Tech Specialty Steel Corp., Carpenter Technology Corp., Colt Industries (Crucible Materials Group), Cyclops Corp., Guterl Special Steel Corp., Joslyn Stainless Steels, and Republic Steel Corp. alleging that producers, manufacturers, or exporters in Brazil of stainless steel bar and wire rod receive bounties or grants within the meaning of section 771(5) of the Tariff Oct of 1930, as amended (19 U.S.C. 1677(5)) and that imports of these products are materially injuring, or threatening to materially injure a U.S. industry.

On June 16, 1982, Commerce notified the Commission that it was commencing investigations of the existence of said subsidies under section 702. Accordingly, effective June 16, 1982, the Commission, pursuant to section 703(a) of the Act (19 U.S.C. 1671b(a)), instituted preliminary countervailing duty investigations to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of the merchandise which is the subject of the investigations by the Department of Commerce.

Views of the Commission

Introduction

After considering the record in these investigations, we determine, pursuant to section 703(a) of the Tariff Act of 1930, that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of stainless steel hot-rolled bar, cold-formed bar,[4] and wire rod [5] which are alleged to be subsidized by the Government of Brazil.[6] [7] [8]

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioners Calhoun and Frank, expressing the statutory language, determine that there is a reasonable indication that an industry in the United States is being injured or is threatened with material injury. Commissioner Frank notes that for purposes of reaching his determinations in these cases he is cumulating the impact of imports of stainless steel hot-rolled bar, cold-formed bar, and wire rod from Brazil and Spain.

[3] Commissioners Calhoun and Frank, expressing the statutory language, determine that there is a reasonable indication that an industry in the United States is being injured or is threatened with material injury. Commissioner Frank notes that for purposes of reaching his determinations in these cases he is cumulating the impact of imports of stainless steel hot-rolled bar, cold-formed bar, and wire rod from Brazil and Spain.

[4] Chairman Eckes and Commissioners Stern and Haggart determine that there is a reasonable indication of threat of material injury by reason of imports of both hot-rolled and cold-formed bar.

[5] Chairman Eckes and Commissioners Stern and Haggart determine that there is a reasonable indication of material injury, and therefore do not reach the issue of threat of material injury.

[6] Chairman Eckes and Commissioners Stern and Haggart have made their determination regarding the impact of the alleged subsidized imports from Brazil on a case-by-case basis, and do not reach the issue of cumulation of the imports under investigation with like-product imports from Spain which were the subject of Hot-Rolled Stainless Steel Bar, Cold-Formed Stainless Steel Bar, and Stainless Steel Wire Rod from Spain, Inv. nos. 701–TA–176 through 178 (Preliminary) USITC Pub. No. 1254 (June 1982) or with like-product imports currently subject to investigation by the United States Trade Representative under section 301 of the Trade Act of 1974.

[7] Commissioner Calhoun's determination is based upon the cumulation of imports of stainless steel hot-rolled bar, cold-formed bar and wire rod with the respective imports from Spain which were the subject of Hot-Rolled Stainless Steel Bar, Cold-Formed Stainless Steel Bar, and Stainless Steel Wire Rod from Spain, Inv. nos. 701–TA–176 through 178 (Preliminary) USITC Pub. No. 1254 (June 1982).

[8] Commissioner Frank determines that there is cumulation of imports of stainless steel hot-rolled bar, cold-formed bar, and wire rod, *at least* in combination with imports of these products from Spain. He finds three separate like products where some overlapping of facilities for production and related other factors occurs in segment areas of these like-products. Details on Commissioner Frank's views on cumulation, other related issues, and the low threshold test for 45-day preliminary injury determination, are found in earlier opinions of Commissioner Frank such as in Certain Steel Products from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, Romania, the United Kingdom, and West Germany, Inv. Nos. 701–TA–86–144, 146, and 147 at 121–135 (Preliminary) (USITC Pub. No. 1221, Volume I) (February 1982). Although Commissioner Frank did not reach the issue of threat of material injury in Hot-Rolled Stainless Steel Bar, Cold-Formed Stainless Steel Bar, and Stainless Steel Wire Rod from Spain, Inv. Nos. 701–TA–176 through 178 (Preliminary) (USITC Pub. No. 1254, (June 1982)), in this preliminary investigation he concludes that an industry in the United States is materially injured or threatened with material injury by reason of imports of stainless steel hot-rolled bar, cold-formed bar, and wire rod from Brazil, which are alleged to be subsidized by the Government of Brazil.

Commissioner Frank notes that the statute and legislative history require the Commission in its preliminary determinations in both antidumping and contervailing duty investigations to exercise only a low threshold test based upon the best information available to it at the time of such determination which reasonable indicates that an industry in the United States could possibly be suffering injury, threat thereof or material retardation. H.R. Rep. No. 96–317, 96th Cong., 1st sess. 52 (1979).

Standards for Determination

In making a determination as to whether there is material injury, the Commission is required to consider, among other factors: (1) The volume of imports; (2) the effect of imports on domestic prices for like products; and (3) the impact of imports on the domestic industry.[9]

In making a determination as to whether there is a threat of material injury, the Commission considers, among other factors: (1) The rate of increases of subsidized or dumped imports into the U.S. market, (2) the capacity in the exporting country to generate exports, and (3) the availability of other export markets.[10] Findings of a reasonable indication of threat of material injury must be based on a showing that the likelihood of harm is real and imminent, and not on mere supposition, speculation, or conjecture.[11]

Domestic Industry

Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[12] Section 771(10) defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses" with the article under investigation.[13]

The imported articles under investigation are stainless steel [14] hot-rolled bar, stainless steel cold-formed bar, and stainless steel wire rod.[15] Bars [16] are semifinished products that have numerous applications in the manufacture of such items as pump shafts, ball bearings, automotive parts, and medical instruments.[17]

Both domestic and imported hot-rolled bar is produced from stainless steel billets in a a rolling mill. Unlike hot-rolled stainless steel sheet, a significant amount of hot-rolled bar is sold as a finished product.[18] In comparison to cold-formed bar, much hot-rolled bar is a flat bar product.[19] The principal applications of hot-rolled bar are in the manufacture of turbines and industrial equipment.[20]

Both domestic and imported cold-formed bar is a refinement of the hot-rolled product that is of higher quality, both in terms of finish and tolerances.[21] Therefore, cold-formed bar has several applications that hot-rolled bar is not suitable for, such as airplane landing gears, boat propeller shafts, automobile valves an fittings, drive shafts and cutlery.[22] As a refinement of the hot-rolled product, cold-formed bar costs more to produce,[23] and sells for a higher price.[24]

Wire rod is a semifinished, hot-rolled product that is round in cross section, between 0.20 inch and 0.74 inch in diameter, and, unlike the bar products, is produced in coils.[25] The manufacture of stainless rod requires specialized equipment and manufacturing processes that are generally different from those used to produce bar.[26] Wire rod is produced in longer lengths than bar, and is preferred over bar of the same diameter by manufacturers with continuous operations, such as wire and fastener producers.[27] It is also priced less per pound than bar of the same diameter.[28] Wire rod is used primarily in the manufacture of stainless steel wire and fasteners.[29]

On the basis of the information available, we have determined that there is one domestic product corresponding to each of the three imported products that are the subject of these investigations. Each of the three stainless steel products under investigation is fungible with the corresponding product of the domestic manufacturers. Each of the three products as shipped has different characteristics and uses, and are priced differently. Accordingly, we determine that there are three separate domestic industries consisting of the domestic producers of each like product.

We emphasize that the definitions of the industries in these preliminary investigations are based on the best information now available. We do not preclude the possibility of defining the domestic industries differently in any final investigation.

Hot-Rolled Stainless Steel Bar

Condition of the Domestic Industry

The condition of the domestic stainless steel hot-rolled bar industry has been deteriorating since 1979, and this downward trend quickened in the first quarter of 1982. Domestic production of hot-rolled bar declined by 13 percent between 1979 and 1981,[30] a drop considerably greater than the 8 percent decline in U.S. consumption for this period.[31] The first quarter of 1982 resulted in a decline of over 25 percent from the comparable 1981 quarter.[32] Domestic shipments also declined during this period,[33] and end-of-period inventories reached a level in 1981 equivalent to 25 percent of producers' 1981 shipments.[34]

Utilization of hot-rolled bar capacity also declined steadily, from 67 percent in 1979 to 57.1 percent in 1981. It declined to 43 percent for the first quarter of 1982, as compared with 57.6 percent for the first quarter of 1981.[35]

Employment patterns also evidenced a steadily negative trend. The average number of production and related workers producing hot-rolled bar declined 6 percent between 1979 and 1981, and fell 18 percent in the first quarter of 1982 compared with the first quarter of 1981.[36] The number of hours paid—a more informative indicator of loss of employment in an industry with reduced hours and furloughs—fell by 14 percent between 1979 and 1981, and by 23 percent during the first quarter of 1982 as compared to the first quarter of 1981.[37]

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[9] 19 U.S.C. 1677(7)(B).

[10] 19 CFR 207.26(d).

[11] S. Rep. No. 96-249, 96th Cong., 1st Sess. 88-89 (1979); S. Rep. No. 1298, 93d Cong., 2d Sess. 180 (1974; Alberta Gas Chemicals, Inc. v. United States, 515 F. Supp. 780, 790 (Ct. Int'l Trade 1981).

[12] 19 U.S.C. 1677(4)(A).

[13] 19 U.S.C. 1677(10).

[14] For the definition of stainless steel, see Report at A-7.

[15] The terms hot-rolled bar, cold-formed bar, and wire rod as used hereinafter refer to stainless steel hot-rolled bar, stainless steel cold-formed bar, and stainless steel wire rod.

[16] For the definition of bar, see Report at A-7.

[17] *Id.* at A-7; A-11.

[18] Transcript of preliminary conference in Hot-Rolled Stainless Steel Bar, Cold-Formed Stainless Steel Bar, and Stainless Steel Wire Rod from Spain, Inv. nos. 701-TA-176 through 178 (Preliminary) USITC Pub. No. 1254 (June, 1982) at 55-56.

[19] *Id.*

[20] *Id.*; Report at A-55.

[21] *Id.* at A-8; A-11.

[22] Transcript, *id.* at A-7.

[23] Transcript of Preliminary Conference (Tr.) at 41 (testimony of Dr. Lena, President, A1 Tech Specialty Steel).

[24] *Id.* at 40.

[25] Report at A-8.

[26] The distinction between rod and hot-rolled bar is not complete to the extent that bar of less than one inch in diameter may be produced by simply uncoiling, cutting and straightening rod, or may be produced on an automated bar and rod mill that can produce both narrow gauge bar and rod simultaneously. Nevertheless, this overlap is limited to the narrower gauges of bar, which constitute approximately half of the bar produced. *See* Report at A-9; transcript of Preliminary Conference at 24-25 (testimony of Dr. Lena).

[27] Tr. 43.

[28] Information on file in Office of Economics (Daniel Klett).

[29] *Id.* at A-8.

[30] Report at A-21 (Table 8).

[31] *Id.* at A-16.

[32] *Id.* at A-21 (Table 8).

[33] *Id.* at A-17 (Table 6); A-20.

[34] *Id.* at A-24.

[35] *Id.* at A-21.

[36] *Id.* at A-24.

[37] *Id.* at A-25 (Table 11).

Sales, gross profits, and net profits before taxes declined in the first quarter of 1982 as compared with the first quarter of 1981.[38] [39] Furthermore, the aggregate figures mask significant losses that have been experienced on an individual producer basis. Two of the six domestic producers reported operating losses in 1980 and 1981. In the first quarter of 1982, the number rose to four.[40]

Material Injury or Threat of Material Injury [41]

Imports of hot-rolled bar from Brazil rose to 536 tons in 1981 as compared with 450 tons in 1980.[42] Imports for the first quarter of 1982 also rose to 226 tons, as compared with 213 tons for the same quarter in 1981.[43]

In addition, the ratio of imports from Brazil to domestic consumption increased from 0.9 percent in 1980 to 1.2 percent in 1981. In the first quarter of 1982, the ratio was 1.7 percent, almost the same record high level of 1.8 percent reached in the first quarter of 1981.[44]

Brazil's export orientation is also very strong. In 1981, 23 percent of Brazilian stainless steel bar [45] production was exported. Although Brazil's production of bar decreased by 5.2 percent between 1980 and 1981, its total exports of bar increased by 2.9 percent during this period.[46] In addition, Brazil's leading producers of stainless steel bar increased overall production cpacity in 1981,[47] and there are indications that they intend to continue to increase exports of bar.[48]

The United States is Brazil's second largest export market for stainless steel bar, accounting for 47 percent of total bar exports in 1981.[49] In addition, there are indications that the United States has become an increasingly attractive market for Brazilian exports of stainless steel bar. Although the level of Brazil's total exports of stainless steel bar has remained fairly constant, exports to the United States have steadily increased from 1,469 tons in 1979 to 2,018 tons in 1980, to 2,914 tons in 1981.[50] The figure for the first quarter of 1982, 1,577 tons, is more than that for all of 1979.[51] The percentage of total bar exports represented by exports to the U.S. market has risen steadily from 23 percent in 1979 to 33 percent in 1980 to 47 percent in 1981, an increase of 10 and 14 percentage points respectively.[52] Thus, an increasing share of exports of bars from Brazil are being exported into the United States.

In addition, there do not appear to be other major export markets for Brazil's bar exports. In fact, exports to the EC, which has been the major market for Brazilian bar exports, have steadily declined from 64 percent in 1979 and 1980 to 47 percent in 1981.[53] Thus, by 1981, exports to the United States had increased so as virtually to equal the decreasing share of bar exports to the EC.[54]

Furthermore, comparisons of U.S. producers' and importers' weighted average net selling prices indicate that hot-rolled bar from Brazil undersells the domestic product by average margins of 16 percent.[55] Also, purchasers have confirmed that they received offers for Brazilian stainless steel bar at prices approximately 30 to 45 percent below the prices of domestic producers.[56]

Conclusion

Our investigation reveals that the domestic stainless steel hot-rolled bar industry is experiencing serious economic problems, that imports of hot-rolled bar from Brazil have increased during the past year, and that hot-rolled bars from Brazil are underselling the domestic product by wide margins. In addition, we note that the capacity of Brazilian specialty steel makers is increasing, and bar exports are increasing. Furthermore, bar exports to the United States, which is one of Brazil's major export markets, have increased significantly, while bar exports to the EC, Brazil's other major export market, have steadily declined. Therefore, we find that there is a reasonable indication that the domestic stainless steel hot-rolled bar industry is materially injured or threatened with material injury [57] by reason of allegedly subsidized imports of hot-rolled stainless steel bar from Brazil.

Cold-Formed Stainless Steel Bar

Condition of the Domestic Industry

The condition of the domestic stainless steel cold-formed bar industry is rapidly deteriorating. Domestic production of cold-formed bar declined by 19 percent between 1979 and 1981.[58] This drop in production was greater than the 13 percent-decline in domestic consumption for the period.[59] Domestic shipments also declined by 21 percent during this period,[60] with end-of-period inventories increasing from a level equivalent to 27 percent of shipments in 1979 to 44 percent of shipments in 1981.[61]

Utilization of cold-formed capacity also declined steadily, from 79.4 percent in 1979 to 64.7 percent in 1981, then fell to 55.1 percent for the first quarter of 1982, as compared with 60.6 percent in the first quarter of 1981.[62]

Employment patterns also declined steadily. The average number of production and related workers producing cold-formed bar decreased by 14 percent between 1979 and 1981, then fell by 11 percent in the first quarter of 1982 compared with the first quarter of 1981.[63] The number of hours paid fell by 21 percent between 1979 and 1981, and by 15 percent during the first quarter of 1982, as compared with the first quarter of 1981.[64]

Although the ratio of operating profit to net sales increased from 9.3 percent in 1979 to 11.6 percent in 1980, the figures for 1981 [65] and the first quarter of 1982 indicate a deteriorating position. In 1981, the ratio of operating profit to net

[38] *Id.* at A-27 (Table 14). The ratio of operating profit to net sales for the first quarter of 1982 compared with the first quarter of 1981 does not reflect a decline. In Hot-Rolled Stainless Steel Bar, Cold-Formed Stainless Steel Bar and Stainless Steel Wire Rod from Spain, Inv. No. 701-TA-176/178 (Preliminary), the Commission noted at page 10 that the ratio of operating profit to net sales for producers of hot-rolled bar declined to 5.9 percent for the first quarter in 1982, from 7.6 percent for the first quarter in 1981. These figures were deried from estimated figures provided by a confidential memorandum from the Director, Office of Investigations to the Commission dated June 3, 1982 (INV-F-073). Since that time actual figures for the first quarter for 1981 and 1982 have been provided and reveal a different trend (see Table 14 at A-36). These actual figures are confidential. The other relevant economic and financial factors discussed above which indicate a deteriorating position in the industry provide the requisite showing for an affirmative finding of threat of injury for purposes of this preliminary investigation.

[39] For purposes of this preliminary investigation, we find that these quarterly trends are consistent with our finding of a deteriorating position of the industry as reflected by other economic indicators such as employment patterns, capacity utilization, production, and shipments.

[40] *Id.* at A-28.

[41] See footnote 1 at p. 5.

[42] *Id.* at A-48 (Table 29).

[43] *Id.*

[44] *Id.* at A-53 (Table 35).

[45] *Id.* at A-42 (Table 25). We do not, at this time, have data on exports of bar from Brazil broken out between hot-rolled and cold-formed. However, according to Department of Commerce statistics, in 1981, of the total stainless steel bar imported from Brazil into the United States, 18 percent was hot-rolled bar, and 82 percent was cold-formed bar. *Id.* at A-28.

[46] *Id.* at A-44.

[47] *Id.* at A-43, A-44.

[48] *Id.* at A-44.

[49] *Id.* at A-42 (Table 25).

[50] *Id.*

[51] *Id.*

[52] *Id.* at A-42 (Table 25).

[53] *Id.*

[54] *Id.*

[55] *Id.* at A-66.

[56] *Id.* at A-67, A-68 (Purchasers 1 and 2).

[57] *See supra* note 1.

[58] Report at A-2 (Table 8).

[59] *Id.* at A-16

[60] *Id.* at A-18. (Table 7); A-20.

[61] *Id.* at A-24.

[62] *Id.* at A-21 (Table 8).

[63] *Id.* at A-25 (Table 11).

[64] *Id.*

[65] *Id.* at A-31 (Table 16).

sales dropped to 10.5 percent. In the first quarter of 1982, the ratio of operating profit to net sales, as well as sales, cash flow, and other profit margins all fell significantly compared with the indicators for the first quarter of 1981.[66]

Furthermore, the aggregate figures mask a trend toward significant losses that have been experienced on an individual producer basis. Whereas one firm sustained operating losses for each of the years 1979 to 1981, during the first quarter of 1982, five domestic producers sustained operating losses compared with four firms in the first quarter of 1981.[67]

Material Injury or Threat of Material Injury [68]

Imports of cold-formed bar from Brazil increased from 1,489 tons in 1979 to 2,378 tons in 1981.[69] Imports for the first quarter of 1982 increased to 1,351 tons, as compared with 259 tons for the same quarter in 1981.[70] The ratio of imports of cold-formed bar from Brazil to apparent U.S. consumption also increased from 1.2 percent in 1979 to 2.1 percent in 1981. The ratio for the first quarter of 1982 was 5.0 percent, compared with 0.9 percent in the first quarter of 1981.[71] As already discussed in relation to hot-rolled bar, although total exports from Brazil have remained fairly constant, exports to the United States have increased significantly, while exports to other major markets have decreased.[72]

A comparison of the weighted average net selling prices of domestic producers and importers indicates that cold-formed bar from Brazil undersold the domestic product by an average margin of 25 percent for one item, and 18 percent for another item.[73] In addition, two purchasers have confirmed that they received offers for stainless steel bar from Brazil at prices approximately 30 percent below domestic prices.[74]

Conclusion

Our investigation reveals that while the domestic industry is losing market share, and its financial position is deteriorating, imports of stainless steel cold-formed bar from Brazil are increasing rapidly, both in absolute numbers and market share. They are also underselling the domestic product by wide margins. Furthermore, the capacity of Brazilian specialty steel producers is increasing, exports of bar are increasing, and exports of bar to the United States are increasing while those to the EC, Brazil's other major export markets for bar, are decreasing. Therefore, we find that there is a reasonable indication that the domestic cold-formed stainless steel bar industry is materially injured or threatened with material injury [75] by reason of alledeged subsidized imports of cold-formed stainless steel bar from Brazil.

Stainless Steel Wire Rod

Condition of the Domestic Industry

The condition of the domestic stainless steel wire rod industry has already substantially declined, and continues to deteriorate. Domestic production of wire rod dropped by 18 percent between 1979 and 1981.[76] This drop in production was considerably greater than the 4.2 percent decline in U.S. consumption of wire rod for the period.[77] Domestic shipments also fell by 24 percent during this period.[78]

Utilization of wire rod capacity also declined steadily, from 67.7 percent in 1979 to 56.8 percent in 1981, and dropped to 42.7 percent for the first quarter of 1982, as compared with 57.4 percent in the first quarter of 1981.[79]

Employment patterns also evidence a sharply negative trend. The average number of production and related workers producing wire rod declined 7 percent between 1979 and 1981, and fell 19 percent in the first quarter of 1982. The number of hours paid dropped by 14 percent between 1979 and 1981, and by 24 percent during the first quarter of 1982 as compared with the first quarter of 1981.[80]

Operating profit plunged by 93 percent from $4.9 million in 1979 to $336,000 in 1980, and turned into an operating loss of $1.4 million in 1981. In the same period, the ratio of operating profit to net sales dropped from 6.6 percent in 1979 to 0.5 percent in 1980, to a negative 2.3 percent in 1981. Similarly, cash flow from operations declined from $5.1 million in 1979 to a deficit of $922,000 in 1981.[81] This negative trend substantially worsened during the first quarter of 1982, with the ratio of operating loss to net sales increasing significantly.[82] Furthermore, the number of firms reporting operating and net losses increased from two in 1979 to three in 1980 and 1981, and to four in the first quarter in 1982.[83] In fact, one of the domestic producers, Crucible, announced in April, 1982, that it was permanently discontinuing its wire rod operation.[84]

Material Injury or Threat of Material Injury [85]

The share of the domestic stainless steel wire rod market held by the domestic industry decreased from 68 percent in 1979 to 55 percent in 1981, and to 46 percent in the first quarter of 1982, as compared with 63 percent in the first quarter of 1981.[86]

Imports of stainless steel wire rod from Brazil increased from 13 tons in 1980, when Brazil first entered the U.S. market, to 1,349 tons in 1981. In addition, imports for the first quarter of 1982 increased to 324 tons, as compared with 285 tons for the same quarter in 1981.[87] Quarterly data indicate that imports of wire rod from Brazil have increased steadily since the second quarter of 1981.[88]

The ratio of Brazilian wire rod imports to domestic consumption also increased from less than 0.5 percent in 1980 to 2.4 percent in 1981, and rose in the first quarter of 1982 to 2.5 percent, as compared with 2.2 percent in the first quarter of 1981.[89] In fact, quarterly figures reveal a steady upward trend starting in the second quarter of 1981, when the import penetration ratio was 1.3 percent through the last quarter of 1981, when it reached 3.3 percent.

The United States is Brazil's largest export market for stainless steel wire rod. In 1981, 36 percent of Brazilian stainless steel wire rod production was exported, and 78 percent of rod exports were exported to the United States.[90] In addition, there are indications that the United States has become an increasingly attractive market for Brazilian exports of stainless steel wire rod. Although Brazil's exports of wire rod increased by 1,075 tons between 1980 and 1981, its exports to the EC, its major export market for rod in 1979 and

[66] *Id.* The specific figures for the first quarter of 1982 are confidential information.
[67] *Id.* at A-29.
[68] See *Supra* note 1.
[69] Report at A-51 (Table 33).
[70] *Id.*
[71] Id. at A-53 (Table 35).
[72] See discussion at 12-13.
[73] Report at A-84.
[74] *Id.* at A-67 (Purchasers 1 and 2).
[75] *See supra* note 1.
[76] *Id.* at A-21 (Table 8).
[77] *Id.* at A-16.
[78] *Id.* at A-20, A-18 (Table 7).
[79] *Id.* at A-21 (Table 8).
[80] *Id.* at A-25 (Table 11).
[81] *Id.* At A-33 (Table 18).
[82] *Id.* The specific figures for the first quarter of 1982 are confidential information.
[83] *Id.*
[84] Statement of Dr. Adolph J. Lena, Transcrip of Preliminary Conference in Hot-Rolled Stainless Steel Bar, Cold-Formed Stainless Steel Bar, and Stainless Steel Wire Rod from Spain, *supra* n. 3 at 4 (May 19, 1982).
[85] *See supra* note 2.
[86] Report at A-53 (Table 35).
[87] *Id.* at A-52 (Table 30).
[88] *Id.* at A-52 (Table 34).
[89] *Id.* at A-41.
[90] *Id.* at A-42 (Table 26). In fact, the increase in exports to the United States account for not only all of the increase in exports for 1981, but for the amount of exports lost to the EC as well, Given that exports to the EC are declining, it appears that no major export markets other than the United States are available.

1980, decreased from 610 tons in 1980 to 420 tons in 1981.[91] Conversely, exports of wire rod to the United States increased from 19 tons in 1980 to 1,515 tons in 1982.[92] Thus an increasing share of total exports of wire rod from Brazil has been exported to the United States. In fact, the increase in exports to the United States account for not only all of the increase in exports for 1981, but for the amount of exports lost to the EC as well. Given that exports to the EC are declining, it appears that no major export markets other than the United States are available.[93]

Furthermore, a comparison of the weighted average net selling prices of domestic producers and importers indicate that wire rod from Brazil has undersold the domestic product by average margins of 7 percent.[94] In addition, purchaser responses indicate that they received offers for rod from Brazil at prices approximately 30 percent below domestic prices.[95]

Conclusion

We find that there is a reasonable indication that the domestic stainless steel wire rod industry is materially injured or threatened with material injury [96] by reason of imports of stainless steel wire rod from Brazil. Our conclusion is based upon steady increases in imports of stainless steel wire rod from Brazil, both in absolute numbers and market share, significant increases in Brazil's exports of wire rod, and the fact that the United States is the primary export market for Brazil's exports. We further note that the share of exports to Brazil's second largest export market has been decreasing. Finally, there are clear indications that the domestic stainless steel wire rod industry has experienced, and is continuing to experience serious economic problems, and that wire rod from Brazil is underselling the domestic product.

Notice of the institution of the Commission's investigations and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** of June 30, 1982 (47 FR 28481). The conference was held in Washington, D.C. on July 13, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

By order of the Commission.

Issued: August 2, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-22540 Filed 8-17-82; 8:45 am]

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[Investigation No. 701-TA-182 (Preliminary)]

Rail Passenger Cars From Canada; Determination

Determination

Based on the record [1] developed in investigation No. 701-TA-182 (Preliminary), the Commission determines (Commissioner Stern dissenting) that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury,[2] by reason of imports of rail passenger cars, assembled or unassembled, finished or unfinished, components and parts and accessories thereof and/or to be used therewith, which are allegedly subsidized by the government of Canada.

Background

On June 24, 1982, the Budd Co., Troy, Michigan, completed the filing of a petition with U.S. International Trade Commission and the U.S. Department of Commerce (Commerce) alleging that imports from Canada of certain parts for subway cars to be delivered to the Metropolitan Transportation Authority of New York City will receive subsidies from the Canadian Government and that, by reason of these imports, an industry in the United States is being materially injured and threatened with material injury. Accordingly, on July 2, 1982, the Commission instituted a preliminary countervailing duty investigation (No. 701-TA-182) under section 701(a) of the Tariff Act of 1930. Notice of the institution of the investigation and conference therefor was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission and by publishing the notice in the **Federal Register** on July 14, 1982 (47 FR 30667). A second notice amending the scope of the Commission's investigation to conform with the scope of Commerce's investigation was published in the **Federal Register** on July 20, 1982 (47 FR 31449). A public conference was held in Washington, D.C. on July 21, 1982, at which all interested parties were afforded the opportunity to present information for consideration by the Commission.

By order of the Commission.

Issued: August 9, 1982.

Kenneth R. Mason,

Secretary.

Views of Chairman Alfred E. Eckes and Commissioners Michael J. Calhoun, Eugene J. Frank, and Veronica A. Haggart

In this preliminary investigation, we determine that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury [3] by reason of imports of components of rapid transit rail passenger cars (subway cars) which are allegedly subsidized by the Government of Canada.[4] In a preliminary investigation, the statute requires that a reasonable indication of material injury or threat thereof be found to exist.[5] Thus, if a petitioner in its pleadings or the Commission in its investigation raises sufficient legal issues or develops sufficient factual information to support a reasonable indication of material injury or threat thereof, then the investigation should be continued.[6] [7]

In conducting a preliminary 45-day investigation, the Commission is not charged with undertaking an abbreviated version of a final investigation, nor must all the information developed in a final investigation be present. The Senate Committee of Finance addressed the nature of a Commission preliminary investigation:

> While the committee recognizes that the ITC cannot conduct a full-scale investigation in 45 days, it expects the Commission to make every effort to conduct a thorough inquiry during that period. *The nature of the inquiry may vary from case to case depending on the nature of the information available and the complexity of the issues.*

S. Rep. No. 96-249, 96th Cong., 1st Sess., 49 (1979) (emphasis added).

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[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] *Id.* at A-67 (Table 44).

[95] Report at A-67 (Purchasers 1 and 2).

[1] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Haggart determining only that there is a reasonable indication that an industry in the United States is threatened with material injury.

[3] Commissioner Haggart determines only that there is a reasonable indication that an industry in the United States is threatened with material injury.

[4] Material retardation of the establishment of an industry is not at issue in this investigation.

[5] 19 U.S.C. 1671b(a).

[6] *See* H.R. Rep. No. 96-317, 96th Cong., 1st Sess., 52 (1979).

[7] Commissioner Frank notes that only a low-threshold test applies to preliminary determinations. An overview on this is found in his views in Frozen

Domestic industry

As an initial matter, the statutory framework under which the Commission conducts countervailing duty investigations calls upon the Commission to define the domestic industry against which to assess the impact of imports. Section 771(4)(A) of the Tariff Act of 1930 defines the domestic industry as "the domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the domestic production of that product."[8] "Like product" is defined in section 771(10) as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation * * *."[9]

Most of the items to be imported, with the exception of the subway car shells, cannot currently be identified. However, the financing offered by the Canadian government, which is alleged to constitute a subsidy in this case, is conditioned upon a minimum Canadian content of 60 percent of the total value of the contract.[10] At present, the record indicates that the subway car shells[11] will be produced in Canada and imported into the United States.[12] In addition, certain other components, the identities of which cannot be ascertained at this time, will be imported from Canada.[13]

The Budd Company, the petitioner in this investigation, is a producer of subway car shells in the United States.[14] In addition, there are a number of other domestic producers of components for subway cars.[15] Thus, for purposes of this preliminary investigation, there is a reasonable basis for finding the like products to consist of shells and certain other components for use in producing subway cars, and defining the relevant domestic industry as including the domestic producers as a whole of those articles. In any final investigation, the Commission will seek to elicit further information in making its decision regarding the scope of the industry.

This preliminary investigation presents the Commission with issues of first impression. The allegedly subsidized imports involved in this investigation are components for subway cars.[16] Bombardier, Inc., of Quebec, Canada, has been awarded a contract for 825 subway cars by the Metropolitan Transit Authority (MTA) of New York City.[17] Bombardier, as prime contractor with the MTA, will not import finished rail cars, but has represented that it will assemble the cars at Barre, Vermont, allegedly from parts and components to be obtained from both U.S. and foreign subcontractors.

The petitioner in this investigation is the Budd Co., the unsuccessful U.S. prime contractor bidding on the MTA contract, and a producer of rail car shells. The impact of the loss of the MTA contract falls initially on Budd as a prime contractor. However, there is a legal question as to whether Budd, as a prime contractor, can claim to be materially injured by reason of the imports under investigation inasmuch as Budd is not literally a producer of a product "like" those products being imported.[18] Thus, Budd, as a prime contractor, may not constitute an "industry in the United States."[19] [20] [21]

The products of Budd, as a U.S. manufacturer of shells, as well as the products of other producers of components similar to those which will be imported, do meet the "like" product test. This raises a further question as to whether resultant injury to component producers is cognizable under the statute when a prime contractor, such as Budd, bids unsuccessfully against a foreign bidder having the benefit of an alleged subsidy from a government.

Material injury or threat of material injury by reason of allegedly subsidized imports

The components which are the subject of the Bombardier contract will be sourced both abroad and domestically with the benefit of alleged subsidization by the Canadian government in the form of financing. The petitioner has presented evidence that the alleged subsidy from the Canadian government enabled Bombardier to offer the New York City MTA more advantageous financing than Budd was able to offer in its bid. With the alleged subsidy, Bombardier was able to offer a financial package that would save the MTA $36 million in net present value.[22] Furthermore, there is evidence on the record that financing was crucial in the MTA contract decision and an important factor explaining Budd's failure to win the contract.[23] Richard Ravitch, Chairman of the MTA, told the Senate Finance Committee on May 28, 1982, that "the absence of sufficient financing associated with the Budd offer made its proposal noncompetitive."[24] As further evidence of the critical importance of financing to awarding of the contract, Budd notes that the MTA and Bombardier entered into a stipulation before a federal judge providing for a resumption of

French Fried Potatoes From Canada, Inv. No. 731-TA-93, USITC Pub. 1259 (1982), at 12-15.

[8] 19 U.S.C. 1677(4)(A).

[9] 19 U.S.C. 1677(10).

[10] Report at A-7.

[11] The shell generally consists of a floor, sides, top, ends, an underframe, and some wiring, and constitutes a significant portion of the overall value of a rail car. Report at A-3.

[12] *Id.* at A-7.

[13] *Id.* at A-7 to A-8.

[14] There are other companies with the capacity to produce shells. We note that Budd did not intend to produce shells in the United States for the MTA contract.

[15] Report, Appendix D.

[16] Subway cars, or rapid transit rail cars, are self-propelled rail passenger vehicles used in subways or elevated rail systems in urban areas or connecting urban and neighboring suburban areas. They are larger, heavier in construction, and designed to be connected in greater numbers than light rail vehicles such as trolleys and streetcars. They differ from other rail cars by being self-propelled, smaller, less heavily constructed, and designed to be connected in fewer numbers. Report at A-3.

[17] The MTA contract is the largest U.S. subway car contract ever awarded to a single contractor. *Id.* at A-9.

[18] 19 U.S.C. 1677(10).

[19] 19 U.S.C. 1677(4)(A).

[20] Commissioner Haggart notes that the current U.S. countervailing duty law, as it traditionally has been interpreted and applied, does not appear to permit the granting of relief to a prime contractor under the facts of this case. The traditional approach to defining "like" product and "industry" for purposes of assessing injury appears to be consistent with Congressional intent. *See*, S. Rep. 96-249, 96th Cong., 1st Sess. 90-91 (1979); MTN Studies: Agreements Being Negotiated at the Multilateral Trade Negotiations in Geneva, Part I, section 2.1.6(1).1, USITC Inv. No. 332-101, printed in Sen. Fin. Comm. Print 96-27, 96th Cong., 1st Sess., 152-153 (1979); Report of the U.S. Tariff Commission to the Senate Committee on Finance on S. Con. Res. 38, Sen. Fin. Comm., Hearing on International Antidumping Code, 90th Cong., 2d Sess. 57 (1968). If this case is returned for final consideration, the parties are encouraged to further address this concern.

[21] Chairman Eckes notes that the Senate Finance Committee in discussing the reasons for the like product provision cautioned: "The requirement that a product be 'like' the imported article should not be interpreted in such a narrow fashion as to permit minor differences in physical characteristics or to uses lead to the conclusion that the product and the article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by imports under investigation." S. Rep. 96-249, 96th Cong., 1st Sess. 90-01 (1979).

[22] Report at A-9 to A-10. Bombardier offered to finance 85 percent of the total contract price of $560 million at 9.7 percent over 10½ years. The entire loan is being supplied by the Export Development Corporation (EDC), the Government of Canada's official export credit agency. These terms were far more favorable than those which Budd was able to offer without government assistance. In addition, the terms of the financing are in violation of the OECD's International Arrangement on Guidelines for Officially Supported Export Credits. *Id.* at A-15.

[23] *Id.* at A-9.

[24] Testimony of Richard Ravitch, Chairman of the MTA, before the Senate Committee on Finance, May 28, 1982.

negotiations with Budd if U.S. Export-Import Bank financing were obtained at the 9.7 percent rate offered by the Canadians.[25] In addition, Pullman Standard Co. of Chicago, Illinois, which also has the capacity to assemble railcars, begain preparations to submit a bid, but became discouraged from doing so when it learned of the financing arrangements being offered by foreign bidders.[26]

Indeed, because the financing was so important to Budd's competitive position in this contract, it actually sought financing abroad and proposed to source certain major components, including shells, offshore. This is especially significant because Budd has the capability of producing rail car shells domestically, and it presently produces them in this country to fulfill other contracts. Budd's decision to source this major component in Portugal would have resulted in diminished employment at its U.S. facilities and also a decreased utilization of those domestic facilities. At least for the purposes of this preliminary investigation, we conclude that the adverse consequences of a decision to source offshore in order to be competitive within the context of the MTA bid process is cognizable under section 771(7)(B).

Because imports will approximate 60 percent of the value of this contract, many domestic producers of components stand to lose the potential production, profits, and employment that would come from awarding the subcontracts domestically.[27] We find a reasonable indication that both Budd and the manufacturers of componets "like" the articles to be imported are materially injured or are threatened with material injury by reason of the allegedly subsidized imports. In any final investigation, the Commission staff would have greater opportunity to ascertain the impact of these lost contracts on the domestic industry.

MTA's decision to award the 825-subway car contract to Bombardier has a serious present and ongoing impact on Budd as a prime contractor. Budd accounts for about half of the rail passenger cars assembled in the United States. In the bidding process, Budd employed designers, engineers and other personnel, expending a signficant amount of money. The record shows that Budd's future production levels and revenues will be adversely affected as a result of the contract being awarded to Bombardier. At the present time, however, we do not determine whether the alleged injury to Budd as a prime contractor is of the type contemplated by the statute.[28]

Additional Views of Commissioner Michael J. Calhoun

In joining the majority opinion, I fully and completely embrace the views expressed therein. I submit these additional views only to amplify matters of particular significance to me.

The prior investigation we had some two and a half years ago on imports of subway cars, investigation number 731-TA-5 and 6, was my fifth vote as a member of this body. In large part, my vote was based on a strict and literal interpretation of the statutory language. I continue to believe that the strict application of the language of the statute together with the understanding offered by the legislative history is the most effective way to assure the dispassionate and even-handed discharge of our responsibilities under the laws we administer. What, perhaps, has changed with the experience of the past two years is my greatly expanded appreciation of the broad range of domestic industries and the extent to which domestic industries can have differing functional characteristics and structural features.

If the trade laws we administer were drafted, as I believe they were, in light of the full array of commercial activity that exists in this country, then the application of law to fact must be undertaken not only within the strictures of the plain language but also in view of the diverse characteristics and features of the many and differing domestic industries that exist. It is from this perspective that I have approached my analysis in this investigation.

In the first place, as I have observed before [29] and as alluded to in the majority views, the standard for preliminary determinations is by the plain terms of the language, lower than that for a final. But simply to say the standard is lower conveys little understanding of how the standards differ from that of the final. The language *"reasonable indication* of material injury * * *." to me connotes acceptance of a measure of uncertainty of conclusion and an insufficiency of information. While what is reasonable is hard to quantify in the abstract and certainly will very from case to case, the understanding I have is that information in a preliminary investigation must demonstrate the allegation by petitioner is more than frivolous, but something less than a conclusive showing. The legal theories offered must be arguably cognizable under the law, but need not in every preliminary investigation be able to survive close and detailed scrutiny. As well, the factual information and the legal arguments raised must offer a measurable potential for an affirmative final determination.

Thus, although much of the information relied upon in the majority opinion may be less than that we have traditionally relied upon in preliminary cases and the legal theories, perhaps, somewhat more tenuous, it seems to me that they well meet these minimal standards for reaching a sound preliminary affirmative. This is so largely because much of the structure and operation of the production of subway cars, as presented here, are new to our experience under the Trade Act of 1979, and present some significant legal issues of first impression. This novelty thereby certainly compels a greater tolerance, at the preliminary stage, in applying law to fact.

In this connection, since January 1980 the Commission has typically considered investigations in which the focal points of our analysis were an imported article and the domestic producers of a competing like product. These previous investigations easily fit within the literal statutory language, which refers to products and merchandise as opposed to intangibles. We have never been called upon, to consider, for example, issues such as the applicability of the statute to imports of services; whether the protection from unfair competition provided by the law is available to suppliers to the companies seemingly most directly affected by the imported merchandise; and the scope of the "other factors" under section 771(7)(B) of the Trade Act of 1979[30] to consider in analyzing the impact of imports.

But this investigation presents, *inter alia*, exactly these novel and mixed questions of law and fact as well as others. Indeed, as an initial matter, we have before us the mixed question of what exactly is being imported. Is it only

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[25] Petitioner's post-conference brief at 1-2.

[26] Report at A-9. Commissioner Frank notes that other potential manufacturers of rail car shells or other components probably were discouraged from preparing bids which allegedly could not compete with Bombardier's bid proposal.

[27] The issue of subsidized financing raised in the MTA contract has consequences for the future health of the domestic industry. From 1982 to 1988, it is expected that between 2,400 and 2,800 cars will be ordered by several cities across the United States. Bombardier has indicated that, because of capacity limitations, it does not intend to bid on any major contracts for subway cars while fulfilling its obligations to the MTA. The information available to the Commission in this investigation does not permit us to assess Bombardier's ability to produce subway cars for future contracts.

[28] *See* note 18, *supra*.

[29] See Supplemental Views of the Commission, Rail Passenger Cars and Parts Thereof, Inv. No. 731-Ta-5 and 6, Additional Views of Vice Chairman Michael J. Calhoun and Commissioner Paula Stern, at p. 17.

[30] 19 U.S.C. 1677(7)(B).

components? In view of the structure and operation of the industry and considering that the imported components are exclusively dedicated not only to use in subway cars, but also to use in the cars under the MTA, are the component imports tantamount to imports of completed cars? Or could the imported article be the technological expertise of Bombardier? These factual questions, if they are to be considered, must be addressed along with the underlying legal question of whether the imports referred to under section 703 as "merchandise" include service functions. In this regard, although it seems rather clear that for the statute to be applicable there must be imports of merchandise and not services, can the domestic industry be those who produce a like product by performing more of a service than actual manufacturing?

As a further example of the novelty of this case and the mixed questions of law and fact it presents, there have been and are produced in the United States car shells and every other component of subway cars which might be imported. However, according to the proposal submitted by Budd as the prime contractor, its shells for the MTA contract were to be produced offshore and the production of the other parts was to be subcontracted. This factual situation raises a legal question as to the significance of a decision by a domestic producer to source offshore and whether harm under the statute has been suffered by those who made that decision.

Another example exists with regard to the question of causality and the measure of requisite harm. Can the impact of the planned imports from Canada be illustrated by the experience of Budd and Pullman-Standard as prime contracts? [31] Pullman-Standard, which ceased bidding on rail passenger cars in 1979 decided to try to reenter the market by bidding on the MTA contract. Engineers and designers were hired and an initial proposal was submitted.[32] However, after conversations with MTA, during which Pullman-Standard was made aware that offshore financing was required,[33] the company decided to proceed no further. It, subsequently, released the designers and engineers and sold its assets. It is reasonable to infer that the withdrawal from bidding on the MTA contract in view of the subsidized competition resulted, in part, in the U.S. industry's failure to hire employees and use its production facilities. But how does this square with our recent decision in *Commuter Aircraft*, 701–TA–174/175, in which we found the domestic industry had not taken sufficient steps to compete? Does this circumstance reveal a reasonable indication of nexus between the subsidized imports and this domestic "producer"?

In light of these and other considerations, it strikes me that there are at least four serious legal issues of first impression which arise from the facts on the record and from the nature of prime contracting:

1. Are the adverse consequences of a sound business decision by a prime contractor to source offshore in order to compete with a subsidized foreign prime contractor one of the "other factors" under section 771(7)(B) which the Commission may consider in analyzing whether material injury or threat exists with regard to a domestic industry?

2. Under what circumstances, if any, can prime contracting be considered a domestic industry, as defined in section 771(4)(A) of the Act?

3. Are the consequences referred to in 1 above and their impact on domestic suppliers of component parts cognizable under Title VII of the Act?

4. Is the failure of a domestic prime contractor one of the "other factors," under section 771(7)(B), which the Commission may consider in analyzing whether material injury or threat exists with regard to domestic suppliers of component parts?

It may be argued that what I characterize as novel issues may well not be before us. They certainly were not argued by petitioner in this investigation, perhaps for good reason in view of our earlier determination or perhaps for other reasons. But, it is my view that the Commission has an obligation to consider not only traditional, but also innovative methods of analysis particularly when a putative industry does not easily fall within our usual analytical methodology. I consider it to be primarily the obligation of a petitioner to present, in support of the position, rational legal argument and facts sufficient to support a reasonable indication of the requisite harm and causation. When, as in this investigation, the petitioner meets this burden with regard to some but not all of the possible arguments, I think the Commission, *sua sponte*, can and, indeed ought to make the more complete analysis if the facts presented allows.

In sum, for the reasons expressed here and in the majority opinion, the legal issues presented by this case are of such significance and are sufficiently supported by reason and by fact as to render, in my mind, a denial of an opportunity for closer scrutiny of this matter not only harsh, but poor policy in the application of section 703.

Views of Commissioner Paula Stern

Summary

This investigation concerns allegedly subsidized articles imported from Canada which will be used for manufacturing in this country 825 subway cars for the Metropolitan Transit Authority of New York (MTA) pursuant to a contract awarded to a Canadian manufacturer, Bombardier, Inc. No finished cars will be imported. Bombardier, Inc., will manufacture the finished cars in a Barre, Vermont facility. None of the Canadian parts which will eventually be used in the domestic production of subway cars will be imported until some time in the future.

A few unusual but major issues were involved in this investigation, all resulting from the principal roles played in this case by the winning bid and the unsuccessful bid. The Commission had to determine whether the parts which the Canadian prime contractor, Bombardier, Inc., presently intends to import will injure domestic producers of those articles. All of the major components of the Bombardier subway cars, except one, the shell, will be sourced in the United States. If the petitioner, the Budd Company (Budd), had been awarded the MTA contract, it would not have manufactured the shell in the United States either. Additionally, the Commission encountered in the countervailing duty investigation the distinction between trade in goods and trade in services. Moreover, the Commission had to consider the likelihood that Bombardier could change its plans to source certain components in the United States and might, instead, import them from Canada. Finally, the Commission confronted the issue of whether it was foreseeable that the Budd Company would lose other rail transit procurements to Bombardier on the basis of Bombardier's ability to employ subsidized imported parts. In considering this possibility, an evaluation was required of the

[31] Any prime contractor bidding on a MTA contract puts together a package for production of rail cars, when necessary arranges for financing and takes the risks of loss, late deliveries from suppliers, quality control, etc.

[32] There is no information on the record to indicate what, if any, U.S. production would have been undertaken by Pullman-Standard. It is generally known that in the 1970's they often produced shells themselves at their facility. It is reasonable to assume they would have done likewise for the MTA contract.

[33] Additionally, it was generally known that no U.S. private or public financing was available to meet the terms offered by other countries. The truth of this belief was underlined by the denial of Budd's request for competitive financing by the Export-Import Bank of the United States.

probability that the Budd Company might produce in the United States the shells for any such contract bid.

The Commission determined on August 3, 1982, by a vote of four to one that there was a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of the imports of the allegedly subsidized merchandise subject to this investigation. In casting the dissenting vote in this preliminary case, I carefully considered the statutory provisions for determining the scope of the domestic industry and for analyzing any material injury which the award of the MTA contract may have caused or threatened to cause to a domestic industry. Underlying my negative determination was the statutory purpose of preliminary investigations.

There are three analytical phases in making a preliminary determination. First, the scope of the domestic industry must be established within the framework of statutory guidelines. Second, the Commission must determine whether the domestic industry is materially injured or threatened with material injury. Third, the Commission must determine whether the material injury or threat of material injury is caused by the allegedly subsidized imports. I will consider each of these in turn.

Statutory guidelines

Subsection 771(4)(A) of the Tariff Act provides—

In general. The term "industry" means the domestic producers as a whole *of a like product,* or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product. [Emphasis added.]

Discretionary departures from this general rule are permitted in circumstances which conform to other subsections of section 771(4). The statute allows the exclusion of domestic producers from the domestic industry where the producers are "related" to exporters or importers of the subsidized product under investigation or are themselves importers of the subsidized product.[34] The statute also permits a determination of material injury based upon material injury to regional industries in situations where there is no material injury to the domestic producers as a whole.[35] Finally, the statute provides for situations in which data on the "like product" cannot be separated from the broader industry's production or profit information. In such cases, the Commission may frame the industry in terms of the narrowest possible group or range of products which include the like product.[36]

The key concept in the selection of the domestic producers which comprise the appropriate domestic industry in a given investigation is the "like product." The Act defines the term "like product" in the following manner.

The term "like product" means a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.[37]

In order to determine whether a domestic industry is materially injured, therefore, the statute directs the Commission to identify the imported products. Once the imported products are identified, the Commission's investigation focuses on identifying the domestic producers of those products. The domestic manufacturing facilities of those producers which are employed in the production of the like product constitute the domestic industry against which the impact of the imports subject to investigation is measured, data permitting.

This scheme for the development of a domestic industry on a case-by-case basis in both antidumping and countervailing duty investigations is modeled after similar provisions of the 1979 version of the so-called International Antidumping Code[38] and the 1979 international agreement on subsidies and countervailing measures.[39] The latter agreement specifically provides that—

[i]n determining injury, the "domestic industry shall * * *" be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products * * *. [References to related producers and regional industries omitted.][40]

The agreement further provides that—

[t]hroughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration or in the absence of such a product, another product which although not alike in all respects, has characteristics closely resembling those of the product under consideration.[41]

Although the wording of the United States law is not identical to that of the international agreement, it was legislated with the knowledge that it would further restrict the discretion of the Commission in administering the antidumping and countervailing legislation which it had exercised prior to the passage of the Trade Agreements Act of 1979. In a 1979 report to the Senate Finance Committee on the agreement, the Commission stated that—

[i]n its administration of the injury provisions in both the Antidumping Act, 1921, and the duty-free provision of the countervailing duty statute, the U.S. International Trade Commission has not considered a domestic industry to be limited to the producers of a "like product" * * *.[42]

Although the United States did not implement the code standard of "identical" as the definition of like, it did adopt the standard of "characteristics and uses." In the words of the Senate Finance Committee Report—

Reason for the provision.—The definition of "like product" in the bill has the effect of delimiting the U.S. industry to be examined by the ITC in making its determinations of whether an industry in the United States is experiencing the requisite degree of injury. The ITC will examine an industry producing the product like the imported article being investigated, but if such industry does not exist and the question of the material retardation of establishment of such an industry is not an issue before the ITC, then the ITC will examine an industry producing a product most similar in characteristics and uses with the imported article. The requirement that a product be "like" the imported article should not be interpreted in such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not "like" each other, nor should the definition of "like product" be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under investigation.[43]

Therefore, the expansion beyond "identical" in section 771(10) of the Act must be said to go only to minor variations in characteristics and uses. For example, the law does not authorize the Commission to equate the

[34] Subsection 771(4)(B).

[35] Subsection 771(4)(C).

[36] Subsection 771(4)(D).

[37] Section 771(10).

[38] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, *done* Apr. 9, 1979, MTN/NTM/W/232, reprinted in, Agreements Reached in the Tokyo Round of the Multilateral Trade Negotiations, H.R. Doc. No. 153, 96th Cong., 1st Sess. (1979).

[39] Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, *done* Apr. 12, 1979, MTN/NTM/W/236, reprinted in H.R. Doc. No. 153, 96th Cong., 1st Sess. (1979).

[40] *Id.*, at Article 6, paragraph 5.

[41] *Id.*, at Article 6, paragraph 1, note 2.

[42] Subcomm. on International Trade of the Senate Comm. on Finance, 96th Cong., 1st Sess., 6 MTN Studies, Pt. 1: Agreements Being Negotiated At The Multilateral Trade Negotiations in Geneva—U.S. International Trade Commission Investigation No. 332–101, at 152 (Comm. Print 1979).

[43] S. Rept. No. 96–249, 96th Cong., 1st Sess., at 90–91.

production of a finished rail car with the production of a component part. It is apparent also that the Commission cannot equate the award of a prime contract with the production of a component part.⊖

The function of the like product provision in the countervailing duty law is to identify as specifically as possible the domestic producers of products cofmparable to the imports in terms of their characteristics and their uses. This approach has two consequences. Although it can increase the likelihood of an affirmative material injury determination, it does so by requiring domestic producers to limit their petitions for countervailing duty relief to only those imports for which a statustical impact on domestic production and consumption can be shown. To the degree that domestic producers are successful in obtaining countervailing duty relief, the duties are imposed on very narrowly described categories of products.

Facts of this case

The allegedly subsidized imports in this investigation involve components for subway cars to be imported from Canada. Bombardier, Inc., of Quebec, Canada, the only Canadian producer of rail passenger cars, has been awarded a contract to produce 825 rail passenger cars for the Metropolitan Transit Authority of New York. The company will assemble the rail passenger cars at its plant in the United States, at Barre, Vermont. Accordingly, no finished rail cars will be imported for the MTA contract. There are two types of parts, components, or accessories which may be used in the assembly of a rail passenger car. The first are those made to transit authority specifications and are produced on order. The other type, which will be discussed below, consists of fungible products which are produced for multiple uses.

There is no continuing market for rail passenger components independent of the transit authority orders. Production takes place when an order is received. A potential subcontractor will not produce products dedicated to the transit authority specification and maintain an inventory of the products in anticipation of being awarded a subcontract. Until a specific order is received, a producer's facilities will be used producing other products unrelated to rail passenger cars. In the absence of an order for specific components, there are no domestic producers of the like product. Even though the sources of Bombardier's components will become known in the coming years as it completes negotiations on the subcontracts, the identities of the suppliers who might have received subcontracts from Budd can never be known.

Although a rail passenger car consists of approximately 5,000 components, six of these components account for a very significant amount of the total cost of manufacturing a rail passenger car.[44] The following are the six components: (1) The shell; (2) the truck assembly (including sideframes, bolsters, wheels and axles); (3) the coupler assembly (including coupler, electrical head, yoke and draft gear); (4) the propulsion system; (5) the brakes; and, (6) the air-conditioning system. Of these six component systems, Bombardier will source all but the shell in the United States. The shell will be imported from Canada. With regard to the other five major component systems, no domestic industries within the meaning of section 771(4) of the Act can be subjected to material injury from allegedly subsidized imports from Canada because there will be no imports under the MTA contract.

The domestic producers of shells which competed with Bombardier for the MTA contract were the petitioner, the Budd Company, and the Pullman-Standard Company.[45] Pullman-Standard announced in March, 1979, that it would no longer bid on rail passenger car contracts.[46] In 1981, the firm was contacted by the Commission staff during the course of a supplementary antidumping proceeding.[47] A company official attributed the firm's withdrawal from the market to difficulties in negotiations with transit authorities, not to foreign competition.[48] Subsequently, the firm was acquired by the Wheelabrator-Frye Company, Hampton, N.H. The firm attempted to re-enter the rail passenger market in October, 1981, by negotiating with MTA for the production and delivery of 325 cars, with options for an additional 825. The company abandoned the negotiations in December, 1981, and Nissho Iwai Corporation was awarded a contract for 325 cars in March, 1982. It was the opinion of both the former contract manager and the President of Pullman-Standard that the negotiations were abandoned because the company did not have access to any foreign financing and because the contract terms and technical specifications were onerous.[49] The decision was not related to imports from Canada within the meaning of section 703 of the Act.

The Budd Company negotiated for the initial contract for 325 cars and the subsequent contract awarded to Bombardier. Budd, unlike Pullman-Standard, would not have produced the shell in the United States. The company does, however, produce shells domestically for other contracts at its Red Lion, Pennsylvania, plant.

Budd would have sourced the shell for the MTA contract in Portugal. The company's reasons for the decision to source the shell in Portugal included: the availability of government-supported export financing in the form of buyer's credits;[50] the lack of capacity to manufacture additional shells at its Red Lion plant;[51] and the cost savings from the offshore sourcing.[52] Having decided to produce the shells in Portugal and finish the cars in a yet-to-be refurbished U.S. facility at Hornell, New York, unrebutted testimony indicates that the company planned to use the second facility for leverage in negotiations with the United Automobile and Aerospace Workers (UAW), the union which represents about 1,300 production workers and about 300 white collar workers at the Red Lion plant.[53] There is nothing on the record to support an infernce that the Budd Company would have reconsidered the decision to source the shell in the United States had it been able to secure domestic financing equivalent to that received by Bombardier or, for that matter, had it been awarded the contract by MTA. Rather, another inference is obvious.

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[44] These components will account for well over half of the material and component cost of filling the MTA contract. With the possible exception of the door operators and controls, no other components will account for more than about 1 percent of the total value of the contract. Report at A–3.

[45] Boeing-Vertol Company, a division of Boeing Co., and General Electric Co., Erie, Pa., assemble rail passenger cars under subcontract with other firms. They do not manufacture shells or compete for transit authority procurements as prime contractors. Report, at A–6, note 1. The withdrawal of the Budd Company's domestic competition from prime contracting predated the arrival of significant competition from foreign railcar assemblers. *Rail Passengers Cars and Parts Thereof Intended for Use as Original Equipment in the United States from Italy and Japan*, Investigation Nos. 731–TA–5 and 6 (Preliminary), USITC Pub. 1034 (February 1980), at 6, finding 8.

[46] Supplemental Views of the Commission with Respect to the Importation of Components and Parts of Rail Passenger Cars, March 23, 1981, at 8.

[47] The Budd Co. Ry. Division v. United States, et al., 507 F. Supp. 997 (1980). The case was dismissed in 1981 in response to a motion filed jointly on behalf of the Budd Company and the Government.

[48] *See, supra*, note 13, at 8.

[49] July, 1982, telephone conversations with Commission staff.

[50] Report, at A–10.

[51] Post Conference Brief of MTA, at Exhibit B; Conference transcript, at 106–107, 128.

[52] *Id.*, at 128

[53] *Id.*, at 132. The plant at Hornell, New York, would not have been represented by the UAW.

The company would have sourced the shell in Portugal because it was more profitable than manufacturing it in the United States.[54] Thus, there is no foundation for treating the Budd Company as a "domestic" producer of shells in analyzing its negotiations with the MTA. Had the Budd bid been successful, its domestic shell manufacturing capability would not have been utilized.

The Budd Company will be affected by the loss of the MTA contract; however, this injury will affect its role as a prime contractor, not its role as a producer of shells. The award of 825 cars is the largest single order in history. The company claims that it may have to lay-off 30 to 40 persons on its engineering staff if it does not win a new contract for the initial work involved in an order.[55] The very nature of a prime contractor is to provide design, engineering, technological, testing, and warranty services. These are services which are not protected by section 771(4) of the Act.[56] The countervailing duty laws cover such services only to the extent that they are inseparably connected to the importation of a product like the imported article subject to investigation.

In concluding my considerations of the definition and condition of the domestic industry, I wish to emphasize that my findings have not turned on obscure technicalities in the law. The differences between various components and those between shells and completed cars are not the "minor differences" about which the Senate Report cautions. The distinctions between domestic and foreign production on the one hand, and goods and services on the other, are equally crucial.

Causation

Assuming that a reasonable indication could be demonstrated that Budd is somehow materially injured, or threatened with material injury, within the meaning of the United States countervailing duty law, the Commission must determine if there is material injury "by reason of" the allegedly subsidized imports from Canada.

Both the legislative history [57] and case law [58] support the position that the language "by reason of" is a contributing cause standard. the Commission is not to weigh the various causes of material injury. However, it is necessary to examine other causes of material injury to determine whether subsidized imports are causally related to any injury. If all of the material injury is caused by factors other than subsidized imports, the Commission must make a negative determination.[59] I have demonstrated that there is no material injury to a domestic industry producing a like product in this investigation. I will now address factors other than the allegedly subsidized financing of imports which caused the loss of the MTA contract to Budd.

There is unrebutted testimony on the record indicating that Bombardier's delivery record is nearly perfect, but the Budd's delivery problems with MTA (on previous contracts) could become that subject of litigation.[60] Budd's delivery problems have been reflected in its revenues.[61] Against a background of delayed deliveries, with a backlog of over 1,000 cars,[62] and an annual average production of only approximately 60 cars a year over the last five years,[63] Budd's contract proposals included an unproven "start-up" plant in Hornell, New York. Moreover, its request in its bid for a waiver of liquidated damages for delays in delivery would not have enhanced its reputation for dependability.[64] The record also discloses that Bombardier is licensed to take advantage of the Nissho Iwai know-how which influenced MTA's award of the first 325 cars.[65] MTA's evaluation of the Nissho Iwai/Kawasaki work in progress has been favorable.[66] At the same time MTA is of the view that some Budd models purchased under other contracts "have still not performed in a satisfactory manner."[67]

I do not intend to imply that the MTA requirements for vendor financing did not influence its selection of Bombardier or, for that manner, the nature of the negotiations between MTA and the contestants. Nor do I wish to imply that the current interest rates in the United States would not influence a decision to seek government export credits abroad. The important point is that the record indicates that, even if Budd had obtained equivalent financing, it would not have been awarded the contract.[68]

Threat of material injury

The analysis of material injury has focused on the results of the MTA contract. During the course of this investigation, there has been speculation on a number of issues, including the possibility that Bombardier might change its sourcing of the major components and the potential impact that the MTA contract might have on other domestic component manufacturers.

The discussion of the six major components of a rail passenger car rests on the assumption that Bombardier will not change its present plans for sourcing these components for the MTA contract. Bombardier will not receive a formal notice to proceed under the MTA contract until the Canadian government formally approves the financing arrangements. This approval is expected this month. Once the notice to proceed is issued, full scale production of cars for the MTA contract is not scheduled to begin for approximately 28 months.[69] Could Bombardier change its sourcing plans for the other five major components? It is doubtful. The timing of such a decision would be inopportune for the firm. Bombardier will not enter into final negotiations with prospective subcontractors until it receives the formal notice to proceed. It will then take months to negotiate the subcontracts. Bombardier's flexibility to adjust sourcing will decline dramatically as time proceeds. Announcing the sourcing of these components in the United States and subsequently shifting

[54] In the investigation of *Certain Iron-Metal Castings from India*, Investigation No. 301–TA–13 (Final), domestic producers of the like products were also responsible for nearly one-third of the imports subject to investigation. In that case, however, the producers imported in order to remain competitive with other importers to maintain their ability to supply the market from their domestic facilities. *See*, Statement of Reasons of Commissioner Paula Stern, USITC Pub. 1098 (September 1980), at 19–20.

[55] Transcript, at 12–13.

[56] International trade in services is only now coming to the forefront of international trade policy. The topic of international standards of conduct for trade in services has been proposed for the agenda for the November, 1982, ministerial meeting in Geneva under the auspices of the General Agreement on Tariffs and Trade. The present investigation might well provide a useful case study for such discussions.

[57] Compare, S. Rept. No. 96–249, at 57–58.

[58] *See*, Pasco Terminals, Inc. v. United States, 477 F. Supp. 201 (1979), *aff'd*, 634 F.2d 610 (1980) ("by reason of" in the Antidumping Act, 1921).

[59] *See*, e.g. *Certain Commuter Airplanes from France and Italy*, Investigation No. 701–TA–174, USITC Pub. 1269, July 1982.

[60] Transcript, at 168, 133, respectively.

[61] Report, A–17.

[62] Post Conference Brief of MTA, at 16.

[63] *Id.*

[64] Transcript, at 131.

[65] *Id.*

[66] *See* MTA Memorandum Re: MTA—Bombardier Subway Contract Award, reprinted in U.S. Department of the Treasury, Financing of Subway Cars for the Metropolitan Transportation Authority of New York, July 13, 1982.

[67] Transcript, at 134.

[68] *See*, transcript, at 184. Budd's presence in the negotiating process was instrumental to MTA in fostering a credit competition among Bombardier, Francorail, and Budd. It is apparent that the presence of the Budd Company in the negotiations was a significant factor in MTA's price negotiations with Bombardier.

[69] Report, at A–7.

the sourcing of these components to Canada would invite new countervailing duty investigations at a time when the company will have far less flexibility to change its sourcing.

What about the balance of the other 5,000-odd components? As the Commission majority may discover during the final investigation, there is no way for the Commission to find out. Many of these products will never be imported. Of those which are, many are not dedicated principally for use in the assembly and finishing of rail passenger cars. For example, consider items such as pipe, valves, wire, insulation, floor covering, and metal fasteners.[70] None of the producers of these products is dependent upon an anticipated rail passenger car subcontract to schedule its production. In the absence of information indicating which companies would have secured a subcontract with Budd for each article which was imported, it is not possible to define an affected domestic industry. On the other hand, there can be no material injury to an identifiable domestic industry capable of producing those imported, non-fungible items produced to the specifications of the MTA contract because these producers only manufacture when an order is received.

Three domestic firms joined together as the Committee of American Subway Car Suppliers in support of the Budd Company's petition. All three firms allege that since they have been suppliers to Budd of subway car components of the kind involved in this investigation, they will be injured by imports of parts from Canada for the MTA contract. Standard Steel is a producer of wheels and axles. Bombardier will source these in the United States. Assuming that Standard Steel does not secure the subcontract, the domestic industries producing steel wheels and axles cannot be materially injured within the meaning of the countervailing duty law by the award of the contract to another U.S. firm. Coach and Car produces seats for rail passenger cars. There is no way to tell whether the company would have been awarded a subcontract had the Budd Company won the MTA contract. Finally, Allegheny Ludlum produces stainless steel sheet used in fabricating shells for rail passenger cars. This stainless steel sheet does not appear to be a part, component, or accessory to a rail passenger car within the scope of the Commerce Department notice issued pursuant to section 702 of the Act (47 FR 31415, July 20, 1982).

[70] *See*, transcript, at 109.

What about the impact of allegedly subsidized Canadian imports in other transit authority contracts? If we assume that the Budd Company works off enough of its present backlog to use its Red Lion plant or decides to forego the cost savings of sourcing its shells in Portugal and opens another domestic facility, Budd, as a domestic producer, could meet Bombardier in head-to-head competition for another prime contract. The record indicates that this is highly unlikely. Bombardier will not compete for steel-wheeled subway car contracts or commuter car contracts other than small orders it might be able to "tack-on" to orders of identical cars on an existing production run.[71] Unrebutted testimony indicated that such "tack-on" orders are very difficult to find.[72] In addition, Bombardier has concentrated its marketing in so-called light-rail-vehicles which Budd does not currently produce.[73] Bombardier, moreover, will have a backlog of its own until 1987 and will not increase its capacity in the foreseeable future.[74] Those upcoming major orders on which Budd may bid will not be bid on by Bombardier. These include the MTA order for 226 cars, the Atlanta order, the Houston order, and the San Francisco order.[75] There is no real threat of imminent injury by reason of allegedly subsidized Canadian imports. There is only speculation and conjecture, unsupported by any information on the record.

The role of a preliminary investigation

The potential consequences of the majority vote in this investigation become clear when it is set in contrast to the Congressional intent in directing preliminary investigations. During the Kennedy Round of trade negotiations, the British and Canadian governments accused the United States of having created antidumping investigative procedures which constituted a non-tariff barrier. At that time, the United States antidumping law provided for the Treasury Department to conduct and complete its pricing investigation prior to the Commission's beginning an injury investigation. The proceedings took months, during which importers had no idea whether they would ultimately owe any antidumping duties. As the provisions of the 1967 version of the International Antidumping Code were negotiated, the concepts of simultaneous investigations concerning pricing and injury within a reasonable period of time were formulated.[76] The bifurcated jurisdiction between the Treasury Department and the Commission prevented simultaneous proceedings in the absence of amending legislation. Treasury, however, proceeded to implement the international code by requiring the Commissioner of Customs to conduct a summary investigation to determine whether investigations should be discontinued at a preliminary stage.[77] Customs regulations were also amended to require that information concerning the importation of merchandise within the purview of the antidumping law be submitted on behalf of an industry in the United States and that the communication include information indicating that an industry in the United States is injured, or is likely to be injured.[78]

The promulgation of the Treasury regulations was without any real authority inasmuch as Congress had enacted a bifurcated procedure in which the determination of injury was delegated to the Commission. The amendment of the Antidumping Act, 1921, by the Trade Act of 1974 provided for a preliminary injury determination to be conducted by the Commission.[79] The Senate Finance Committee Report on the bill which became the Trade Act stated that "this amendment is designed to eliminate unnecessary and costly investigations which are an administrative burden and an impediment to trade."[80]

The enactment of Title VII of the Tariff Act in 1979 extended the preliminary investigation to the countervailing duty determinations in section 703. The Finance Committee stated:

> A major objective of this revision of the countervailing duty law is to reduce the length of an investigation. Long investigations serve no purpose * * *.[81]

The Finance Committee also stated that the "reasonable indication" standard was to be applied in esentially the same manner as the "reasonable indication"

[71] Post Conference Brief, at 6.

[72] Transcript, at 187.

[73] Transcript, at 83. A close reading of the "confidential" letter received on July 30, 1982, from the Budd Company does not change this assessment.

[74] Post Conference Brief, at 6.

[75] *Id.*

[76] See, Gerald and Victoria Curzon, "The Management of Trade Relations in the GATT," in Andrew Shonfield, *International Economic Relations of the Western World, 1959–1971*, Vol. I., at 247–248 (1976).

[77] 19 CFR 153.29 (1973).

[78] 19 CFR 153.27(e) (1973).

[79] Section 321 of the Trade Act of 1974, amending the Antidumping Act, 1921. The Antidumping Act, 1921, was repealed by the Trade Agreements Act and replaced by the antidumping provisions of Title VII of the Tariff Act.

[80] S. Rept. No. 93–1298, 93d Cong., 2d Sess., 171 (1974).

[81] S. Rept. No. 96–249, at 49.

standard in the 1974 amendment to the Antidumping Act, 1921.

The analysis of a claim for countervailing duty relief within the statutory guidelines for determining the appropriate scope of the domestic industry and assessing material injury in terms of economic, rather than any other, considerations is necessary to prevent two undesirable results: an inordinate and unnecessry expenditure of government resources, and unnecessary barriers to import trade stemming from uncertainty about potential liability for duties and from the expense of mounting defenses in two administrative proceedings.

The Commission may not rely on a "lower threshold" of injury for a peliminary determination as compared with the final determination. The Commission continues a case when the preliminary investigation shows a reasonable indication of material injury even though the data are inadequate to evaluate certain economic criteria. Examples of missing data that might prompt an affirmative preliminary determination include a lack of comparable transaction prices in a case where average prices or list prices do not reflect the actual competition and the inability of the Commission to gather an adequate sample of domestic producers to provide profit and loss allocations on a like product within the 45 days.[82]

Neither type of case is present here. There are no market prices of "shells." Rather, there is an average prices per finished car, of which there are no imports. Similarly, we do not need time to allow the domestic producer to improve a profit and loss allocation to a product which would have been made in Portugal. What then does the majority expect to see if the case returns for a final investigation in mid-September or, perhaps, late November? Bombardier will not have completed its subcontracts by that time. Budd will not be able to provide further information on subcontracts it will never negotiate. In short, the record of the present investigation is unusually complete. There is little else the Commission can expect to emerge in a final investigation.

Although the statutory standard for a determination in a preliminary investigation is different from that in a final investigation, the statutory guidelines for selecting the domestic producers which make up the domestic industry and the guidelines for assessing material injury are identical in preliminary and final investigations. Moreover, the statute requires that an affirmative determination be supported by a finding that material injury is "by reason of" the imports under investigation in both preliminary and final investigations. Is the factual information necessary to support an affirmative determination. In the preliminary investigation, the information available to the Commission need only indicate a reasonable indication of material injury by reason of the imports subject to investigation. In a final investigation, an affirmative determination must be supported by substantial evidence on the record.[83] Thus any determination in a final investigation of this case will essentially involve re-evaluating information which is already before the Commission in the record of this preliminary investigation.

Burden of proof

The Senate Finance Committee has stated: "The burden of proof under section 703(a) would be on the petitioner."[84] The Commission has no "burden of proof" in the sense of a formal adjudication. The 45-day time limit does create a burden of coming forward with the information available to the petitioner which supports its claims of material injury.[85] The statutory scheme clearly contemplates that the Commission evaluate petitioner's claims against the economic factors in section 771(7) of the Act. The Finance Committee Report supports this construction of the statutory scheme:

> While the committee recognizes that the ITC cannot conduct a full-scale investigation in 45 days, it expects the Commission to make every effort to conduct a thorough inquiry during that period.[86]

The House report is no less exacting:

> It is therefore intended that the ITC will investigate the allegations in the petition in as thorough a manner as possible using the information available within that time period, and will provide interested parties a reasonable opportunity to present their views.[87]

The Budd Company's burden of coming forward in this case was established to the satisfaction of the majority on the basis of a novel theory of an entitlement to contract awards. The 1980 proceeding was based upon the award of transit authority contracts which called for deliveries in 2–3 years.[88] The best argument the Budd Company put forward for relief in that investigation was that as it worked off its backlot of 563 cars, the lact of new business between 1980 and late 1982–83 would result in lay-offs. During the judicial review of the Commission's unanimous negative determination in that investigation, the Commission, again unanimously, informed the U.S. Court of International Trade that the assumption Budd would be awarded no new business was "completely speculative."[89]

There are three basic distinctions beteween the 1980 findings of the Commission and the majority vote in this investigation. First, the Budd Company's backlog has now expanded to over 1,000 cars, while its average production over a 5-year period was only 62 cars per year. Second, the Commission has information on its record that Budd will not be confronted with competition from Bombardier in the foreseeable future. Third, in the 1980 antidumping proceeding, the Budd Company was a domestic producer within the meaning of section 7714(4) of the Act. It cannot be viewed as any more than a provider of services in the present contract.

The consequences of the majority vote

Preliminary investigations conducted under the Act are record proceedings. Had the majority voted negative in this case, judicial review of the determination in the U.S. Court of International Trade would have been available—if the Court had found the Budd Company to have had standing. A negative determination would have been supported by more than substantial evidence on the record.

The consequences of the majority vote are far reaching, going beyond the effect on participants in this proceeding. Persons who appear before the Commission in antidumping and countervailing duty investigations ordinarily have difficulty predicting an outcome where there are no publicly available statistics for the domestic production on the like product and the size of the domestic market for imported and domestic articles. Before this majority vote, however, they could have found comfort in the presence of statutory guidelines for the determination of the scope of the

[82] *See*, e.g., *Countertop Microwave Ovens from Japan*, Investigation No. 731–TA–4 (Preliminary), USITC Pub. No. 1033 (February 1980).

[83] Compare, Additional Views of Commissioner Paula Stern, *Carbon Steel Wire Rod from Brazil, Belgium, France, and Venezuela*, Investigation Nos. 701–TA–148 through 150 (Preliminary), USITC Pub. 1230 (March 1982), at 32.

[84] S. Rept. No. 96–249 at 49.

[85] *See*, Additional Views of Vice Chairman Michael J. Calhoun and Commissioner Paula Stern, in Supplemental Views, *supra*, note 13, at 19–20.

[86] S. Rept. No. 96–249, at 66.

[87] H. Rept. No. 96–317, 96th Cong., 1st Sess. 61 (1979).

[88] *See, Rail Passenger Cars and Parts Thereof* * * *, *supra*, note 12.

[89] Supplemental Views, supra, note 13, at 14.

industry. These guidelines at least indicate to all participants those producers whose output will be considered. In addition, an economic analysis of the impact of the complained of imports on that market is also assured by the criteria in the statute. This apparently had not always been the case.[90] The majority vote in this case throws into jeopardy the integrity of the carefully defined role of preliminary investigations created by Congress in its revisions of the law in 1979.

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Cassady, Fuller & Marsh, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement, as set forth below, have been filed with the United States District Court for the Middle District of Alabama, Montgomery, Alabama in *United States v. Cassdady, Fuller & Marsh, et al.*, Civil Action No. 80–110–S. The complaint alleged that the defendants and their co-conspirators engaged in a combination and conspiracy to fix legal fees for closing residential real estate loans, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment enjoins the defendants, in concert with others, from fixing fees for legal services and from any communications about past, present, or future legal fees between each defendant and any other attorney, except members of the same firm.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the Federal Register and filed with the Court. Comments should be directed to John W. Poole, Jr., Chief, Special Litigation Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530 (Telephone: 202/633–2425.

[90] Prior to the enactment of Title VII, one domestic industry witness complained to the House Subcommittee on Trade that—the Commission seems to be able to use nearly any criterion or any vague means it desires to determine whether there is injury or not. And we would like to know definitely what constitutes it.

Subcomm. on Trade of the House Ways and Means Comm., 95th Cong., 1st Sess., Hearings on the Adequacy and Administration of the Antidumping Act of 1921 (Serial 95–46), 95th Cong., 1st Sess., Nov. 8, 1977.

United States District Court, Middle District of Alabama, Southern Division

United States of America, Plaintiff, v *Cassady, Fuller & Marsh; Dowling & Carmichael; Pittman, Whittaker & Hooks; Rowe, Rowe & Sawyer;* and *S. Mark Jordan*, Defendants (Civil Action No. 80–110–S; Filed: August 5, 1982).

Stipulation

The parties, by their attorneys, stipulate that:

1. The parties consent that a Final Judgment in the form attached may be filed and entered by the court, upon the motion of any party or upon the court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that the plaintiff has not withdrawn its consent, which it may do any time before the entry of the proposed Final Judgment by serving notice on the defendants and by filing that notice with the Court.

2. If the plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the Plaintiff:
William F. Baxter,
Assistant Attorney General

Joseph H. Widmar,
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United States District Court, Middle District of Alabama, Southern Division

United States of America, Plaintiff, v. *Cassady, Fuller & Marsh; Dowling & Carmichael; Pittman, Whittaker & Hooks; Rowe, Rowe & Sawyer; and S. Mark Jordan*, Defendants (Civil Action No. 80–110–S).

Final Judgment

Plaintiff, United States of America, having filed its complaint on December 9, 1980, and the plaintiff and the defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact of law herein, and upon consent of the parties, it is hereby

Ordered, adjudged and decreed, as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against each defendant under Section 1 of the Sherman Act, 15 U.S.C. 1.

II

As used in this Final Judgment:

(A) "Legal fees" means any charge made by an attorney or law firm for services provided to a client.

(B) "Law firm" means a partnership, professional association, or professional corporation, formed by two or more attorneys, pursuant to a written or oral agreement, through which those attorneys practice law as a group.

III

This Final Judgment applies to the defendants and to each of their partners, associates, members, agents, employees, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

(A) Each defendant is enjointed and restrained from directly or indirectly:

(1) Entering into, adhering to, participating in, maintaining, reviving, furthering, or enforcing with any other defendant, law firm, or attorney, any contract, agreement, understanding, arrangement, plan, program, combination, or conspiracy to fix, establish, raise, or maintain legal fees, or which has the effect of fixing, establishing, raising, or maintaining legal fees.

(2) Communicating to, requesting from, or exchanging with any other defendant, law firm or attorney any statistics or other information concerning past, current, or future legal fees, or consideration or contemplating of a change in legal fees by any defendant, law firm, or attorney. Any defendant, however, may communicate with another defendant, attorney, or law firm about legal fees in a particular matter if (a) such legal fees are to be determined by a court or included in a court order, (b) an attorney-client relationship exists between a defendant and another defendant, attorney, or law firm, and the communications concern only legal fees incurred as a result of such relationship, (c) the attorneys communicating about legal fees are representing the same client in the same matter, and the communications concern the legal fees to be charged that client, or (d) such legal fees are to constitute all or part of a settlement of any

dispute between the client of a defendant and a client of another defendant, attorney, or law firm, and the communications concern the amount of legal fees that one client will pay the attorney of the other.

(B) Nothing in paragraph IV(A) shall apply as between any defendant and any member, partner, stockholder, associate, or employee of his law firm.

(C) Nothing in paragraph IV(A) shall prevent any defendant from attending any seminar presented by the Alabama State Bar.

V

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to any defendant made to his business office, duly authorized representatives of the Department of Justice shall be permitted:

(1) Access during such defendant's office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference, to interview the defendant and the defendant's partners, members, employees, agents, or associates, who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to a defendant's business office, that defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this paragraph V shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by any defendant to plaintiff, that defendant represents and identifies in writing any material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten days' notice shall be given by plaintiff to that defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

VI

Jurisdiction is retained by this Court to enable any of the parties, but no other person or entity, to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or implementation of this Final Judgment, for the enforcement or modification of any of its provisions, and for the punishment of any violation hereof.

VII

This Final Judgment shall expire on the tenth anniversay of its date of entry.

VIII

Entry of this Final Judgment is in the public interest.

Dated:

———— ————,

United States District Judge.

United States District Court, Middle District of Alabama Southern Division

United States of America, Plaintiff, v. *Cassady, Fuller & Marsh; Dowling & Carmichael; Pittman, Whittaker & Hooks; Rowe, Rowe & Sawyer; and S. Mark Jordan,* Defendants (Civil Action No. 80–110–S).

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the "Act"), the United States of America submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceedings

The complaint in this action, filed December 9, 1980, alleges that beginning at least as early as May 1980 and continuing to the present, the defendants and their co-conspirators engaged in a combination and conspiracy to raise and fix legal fees for residential real estate closings in and near Enterprise, Alabama, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

In its complaint, the government asked the court to find that the defendants and their co-conspirators engaged in the conspiracy alleged, and it requested the court to enjoin the defendants and their co-conspirators from continuing or renewing the conspiracy or engaging in any other actions having a similar purpose or effect.

Entry of the proposed Final Judgment would terminate the action, except that the court would retain jurisdiction over the matter for further proceedings that may be required to interpret, enforce, or modify the Judgment, or to punish violations of it.

II

Description of Practices Involved in the Alleged Violation

The defendants Cassady, Fuller & March; Pittman, Whittaker & Hooks; and Rowe, Rowe & Sawyer are partnerships with offices in Enterprise, Alabama, and whose members are attorneys admitted to the Alabama State Bar. The defendant Dowling & Carmichael was formerly such a partnership. Its former members, John C. Dowling and Daniel F. Carmichael, Jr., now practice law individually in Enterprise, as does the defendant S. Mark Jordan. Dowling, Carmichael, and Jordan are all members of the Alabama State Bar.

The government was prepared to prove that the defendants and co-conspirators met in the state courthouse in Enterprise at or about 5:00 p.m., May 6, 1980, and there reached an understanding or agreement to raise the level of legal fees for residential real estate closings. The government was further prepared to prove that the defendants actually did raise such fees beginning the morning after the meeting.

The complaint alleges that the combination has had the following effects, among others:

(a) Fees charged by the defendants for residential real estate closings have been raised, fixed, maintained, and stabilized at artificial and non-competitive levels;

(b) Price competition among members of the defendants for their services has been restrained; and

(c) Persons using the defendant's real estate closing services have been unable to purchase such services at competitively determined prices.

III

Explanation of the Proposed Final Judgment

The United States and the defendants have stipulated that the court may enter the proposed Final Judgment after compliance with the Act. The proposed Final Judgment provides that its entry does not constitute any evidence against or admission by either party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Act, the proposed Final Judgment may not be entered until the court finds that entry is in the public interest.

A. Prohibited Conduct

The proposed Final Judgment would prohibit each defendant, in concert with others, from continuing the conspiracy or participating in any activities whose purpose or effect is to fix, establish, raise, or maintain legal fees. In addition, any form of communication between any defendant and any other attorney about past, present, or future legal fees would be prohibited with certain exceptions, namely, (1) where the fees were court ordered, (2) where an attorney-client relationship existed between a member of the defendant and the other attorney and the communication involved the fee to be charged as a result of that relationship, (3) where there was joint representation of a client and the communication involved the fee to be charged that client, and (4) where the legal fee was part of a settlement between a client of a defendant and a client of another attorney or law firm and the communication concerned the amount of legal fees that one client would pay the attorney of the other.

The Final Judgment would not prohibit communications within a law firm or attendance at state bar seminars.

B. Scope of the Proposed Judgment

The proposed Final Judgment would remain in effect ten years from the date of its entry

and would apply to each of the defendants and to each of their partners, associates, members, agents, employees, successors, and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of the Judgment.

C. Effect of the Judgment on Competition

The relief in the proposed Final Judgment is designed to ensure that consumers have the oppportunity to purchase legal services in and near Enterprise, Alabama, at competitive rates.

Two methods for determining compliance with the terms of the Final Judgment are provided. First, upon reasonable notice, the Department of Justice would be given access to the defendant's records relating to matters contained in the Final Judgment and would be permitted to interview each of the defendant's partners, members, employees, agents, or associates. Second, upon written request, the Department of Justice could require each defendant to submit written reports under oath about any matters relating to the Final Judgment.

The Department of Justice believes that the proposed Final Judgment contains adequate provisions to prevent further violations of the type upon which the complaint is based.

IV

Remedies Available To Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, plus costs and reasonable attorney's fees. Entry of the proposed Final Judgment would neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Judgment would have no automatic effect in any subsequent lawsuits that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Judgment

As provided by the Act, any person who believes that the proposed Final Judgment should be modified may submit written comments to John W. Poole, Jr., Chief, Special Litigation Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to its entry. The Judgment provides that the court retains jurisdication over this action, and the parties may apply to the court for an order to modify, interpret, or enforce it, if necessary.

VI

Alternative to the Proposed Final Judgment

The alternative to the proposed Final Judgment considered by the Department of Justice was a full trial of the issues on the merits and on relief. At such a trial the government could have asked the court to "roll back" the defendants' legal fees for residential loan closings to their pre-conspiracy levels. The complaint did not specifically ask for such relief, however, and it was unclear whether the court would have granted it even if the government had prevailed on the merits. In addition, private parties damaged by the conspiracy have federal legal remedies availabe to them, including an action under the antitrust laws for three times the amount of their actual damages. The uncertainty of obtaining relief beyond what is actually embodied in the proposed Final Judgment, the substantial expense of further litigation, and the availability of legal remedies to third parties led the government to conclude that further litigation would not be in the public interest.

VII

Determinative Materials and Documents

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered in formulating the proposed Final Judgment. Consequently, none are filed herewith.

Respectfully submitted.

Joel F. Brenner,
Steven B. Kramer,
Attorneys, Special Litigation Section Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530; Telephone: (202) 633–2836

[FR Doc. 82–22475 Filed 8–17–82; 8:45 am]
BILLING CODE 4410–01–M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Meeting Addendum

August 13, 1982.

A change in location has been made to the agenda for the August 30–31, 1982 meeting of the National Advisory Committee on Oceans and Atmosphere (NACOA) published in the **Federal Register** of August 13, 1982 (Page 47 FR 35381). The revised tentative agenda is as follows:

Monday, August 30, 1982

Joseph Henry Building, Room 453, 2122 Pennsylvania Avenue, NW., Washington, D.C.

Plenary

9:00 a.m.–9:30 a.m.
- Announcements

Panel Meetings

9:30 a.m.–12:30 p.m.
- Radioactive Waste Disposal Chairman: John A. Knauss, Room 453

Topic: Deepseabed Disposal of Nuclear Waste
Speakers: Rip Anderson, Sandia National Laboratories; Department of the Navy Representative

9:30 a.m.–12:30 p.m.
- Coast Guard Review Chairman: Michael Naess, Room 454

Topic: OMB Considerations
Speakers: Nicholas Stoer, Office of Management and Budget

12:30 p.m.–1:30 p.m.
Lunch

Panel Meeting

1:30 p.m.–5:00 p.m.
- Ocean Satellites Chairman: FitzGerald Bemiss, Room 453

Topic: Ocean Research and Satellites
Speakers: TBA

5:00 p.m.
Recess

Tuesday, August 31, 1982

Joseph Henry Building, Room 453, 2122 Pennsylvania Avenue, NW., Washington, D.C.

Panel Meeting

8:30 a.m.–10:00 a.m.
- Hydrology Chairman: Paul Bock, Room 454

Topic: Work Session—Draft Report

Plenary

10:00 a.m.–12:30 p.m.
- Topic: OCS Leasing and Fisheries Inputs

Speakers: Department of the Interior, Department of Commerce
Room 453

12:30 p.m.–1:30 p.m.
Lunch

Plenary

1:30 p.m.–3:30 p.m.
1:00 p.m.–2:30 p.m.
- Marine Transportation Report, Don Walsh, Panel Chairman

2:30 p.m.–3:30 p.m.
- Action Items and Panel Reports

3:30 p.m.
Adjourn

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Washington, DC 20235.

Dated: August 13, 1982.

Steven N. Anastasion,
Executive Director.

[FR Doc. 82–22543 Filed 8–17–82; 8:45 am]
BILLING CODE 3510–12–M

NUCLEAR REGULATORY COMMISSION

[License: 42–08456–02; EA 82–45]

Consolidated X-Ray Service Corp.; Order Imposing Civil Monetary Penalty

I

Consolidated X-Ray Service Corporation, P.O. Box 20195, Dallas, Texas, (the "licensee") is the holder of License 42–08456–02 issued by the Nuclear Regulatory Commission (the "Commission"). This license authorizes

the use of sealed sources of byproduct material.

II

Inspections of the licensee's activities under the license were conducted on December 15, 1981 and January 18, 1982 at the licensee's facility located in Woodbridge, New Jersey, and on November 25, 1981 at a field site in Paulsboro, New Jersey. As a result of the inspections, it was determined that the licensee had not conducted its activities in full compliance with the conditions of its license and with the requirements of NRC regulations. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated April 12, 1982. This Notice stated the nature of the violation, the provisions of the Nuclear Regulatory Commission regulations and license conditions which the licensee had violated, and the amount of civil penalties proposed for the violation. An answer dated May 7, 1982 to the Notice of Violation and Proposed Imposition of Civil Penalty was received from the licensee.

III

Upon consideration of the answer received and the statements of fact, explanation, and argument for mitigation or cancellation contained therein, as set forth in the Appendix to this Order, the Director of the Office of Inspection and Enforcement has determined that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96–295) and 10 CFR 2.205 it is hereby ordered that:

The licensee pay civil penalties in the total amount of Four Thousand Dollars within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasure of the United States, and mailed to the Director of the Office of Inspection and Enforcement.

The licensee may, within 30 days of the date of this Order, request a hearing. A request for hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceeding and, if payment has not been made by that time, the matters may be referred to the Attorney General for collection.

V

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated the NRC regulation and license condition as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty, as amended by this Order; and,

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Bethesda, Maryland, this 6 day of August 1982.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

The violation resulting in the civil penalty as set forth in the Notice of Violation (dated April 12, 1982) is restated and the Office of Inspection and Enforcement staff's evaluation and conclusion regarding the licensee's response (dated May 7, 1982) is presented.

Statement of Violation

10 CFR 34.23 requires that locked radiographic exposure devices and storage containers by physically secured to prevent tampering with or removal by unauthorized personnel.

Condition 17 of License 42–08456–02 requires that licensed material be used in accordance with the procedures in the application dated March 28, 1979. In the section of those procedures entitled "Transportation of Radiographic Devices" it requires that no device be moved unless all safety plugs are inserted, the device is locked, and the device is secured to the vehicle during transportation.

Contrary to the above, on January 15, 1982 a radiographer at a field site in Oil City, Pennsylvania transported a radiography device, containing 24 curies of iridium-192, which did not have the rear safety plug inserted and was not secured to the vehicle. In addition, although the device was locked, the key was left in, thereby defeating the purpose of the lock.

This is a Severity Level III violation (Supplement VI)

(Civil Penalty $4,000)

Evaluation and Conclusion

The licensee admitted the violation as described but argued that the civil penalty should not be assessed on the following grounds: (1) A licensee cannot ensure that an employee who is trained in accordance with 10 CFR 34.31 and the licensee's procedures will not perform in a negligent manner and that no such means of preventive action can be finally effective; and (2) NRC is aware that an employer-licensee has limitations in the employer-employee relationship and has recognized that it is necessary to also go directly to the employee.

A licensee is liable for violation by its employees when those employees are acting within the scope of employment and are furthering the licensee's interest. As long as a corporation, company, or individual has an NRC license, it is responsible for any violations of NRC regulations caused by its employees, *Atlantic Research Corp.*, CLI–80–7, 11 NRC 413 (1980). Section 34.2(b) of 10 CFR Part 34 states that radiographers are responsible to the licensee for assuring compliance with NRC regulations and the conditions of the license. Furthermore, in this case the NRC staff does not accept the argument that there is noting else which the licensee can do in order to improve its assurance of compliance with NRC regulations. The licensee's letter of May 7, 1982, addressed its implementation of a program for refresher training. In addition to training, frequent effective unannounced audits of each radiographer in the field, with disciplinary measures for infractions as appropriate, can provide further assurance that radiographers are operating in compliance with requirements.

The licensee made reference to a Statement of Considerations which accompanied publication of a regulation in 46 FR 53647 (October 30, 1981), attempting to show that the NRC recognizes "it is necessary to go directly to the radiographer for redress." However, the referenced regulation, 10 CFR 20.201(b), explicitly places the burden of responsibility on the licensee. Furthermore, 10 CFR 20.201(b) and the Statement of Considerations which accompanied it addresses concerns different from the ones addressed by the regulations which the licensee has violated.

The NRC staff does not accept the licensee's argument that a civil penalty in this case would serve no useful purpose. Here, a civil penalty will put this licensee, as well as other licensees and their employees, on clear and unambigous notice that strict compliance with NRC regulations is required and that lasting and effective corrective action is required. The licensee has intiated some corrective action and the staff recognizes this. The staff recognizes that Consolidated X-Ray Service Corporation managment personnel were not directly involved in the subject violation. If, to the contrary, there existed evidence of management involvement or a failure to implement immediate corrective action, the proposed civil penalty would have been higher.

After considering all the circumstances of this case, the staff has concluded that the amount of the civil penalty as originally proposed is appropriate.

[FR Doc. 82–22549 Filed 8–17–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-321]

Georgia Power Company, et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issuad Amanmant No. 89 to Facility Oleratinc License No. DPR-57, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia, which revised Technical Specifications (TSs) for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 1 (the facility) located in Appling County, Georgia. The amendment is effective as of the date of issuance.

The amendment revises the TSs by changing Table 3.7-4, Primary Containment Testable Isolation Valves, to agree with the as-built plant configuration.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated December 2, 1981, (2) Amendment No. 89 to License No. DPR-57, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 10th day of August 1982.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 82-22550 Filed 8-17-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-309]

Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Plant); Exemption

I.

The Maine Yankee Atomic Power Company (the licensee) is the holder of Facility Operating License No. DPR-36 which authorizes operation of the Maine Yankee Atomic Power Plant. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises one pressurized water reactor at the licensee's site located in Lincoln County, Maine.

II.

On November 19, 1980, the Commission published a revised section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections, III.G., is the subject of this exemption request. III.G. specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

By letter dated March 5, 1982 the licensee requested an exemption from the requirements of Section III.G.3b to the extent that it requires the installation of a fixed fire suppression system in the control room. In support of this request the licensee notes the existing fire protection features, the fact that the control room is continuously manned and the potentially adverse impact on equipment and personnel occupancy of an inadvertent initiation of a fixed suppression system.

III.

We have reviewed the licensee's exemption request. The control room is enclosed by walls, floor and ceiling of reinforced concrete construction, sufficient to achieve a 3-hour fire rating. Openings into the room are protected by fire doors, dampers and fire rated penetration seals. Safe shutdown equipment in the room consists of the main control consoles and cabinets, including redundant control cables, indicating instruments and relays.

Existing fire protection consists of a smoke detection system located throughout the room and inside the control cabinets. This protection is supplemented by portable fire extinguishers and manual hose stations. The fire loading in the control room is low. The room is continuously manned. In the event the control room becomes uninhabitable due to smoke or heat, an alternate capability to achieve safe shutdown, outside the control room, exists.

The intent of Section III.G is to require an acceptable level of fire safety to assure the maintenance of safe shutdown capability. Because the control room is continuously manned and fire extinguishing equipment is located in the control room, there is reasonable assurance that a fire would be promptly extinguished. Therefore, the installation of a fixed fire suppression system will not significantly increase the level of fire protection in the control room and the exemption requested by the licensee should be granted.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or common defense and security and is otherwise in the public interest and hereby grants an exemption from the requirements of Section III.G.3b of Appendix R to 10 CFR Part 50 to the extent that it requires the installation of a fixed fire suppression system in the control room at Maine Yankee.

The NRC staff has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland, this 11th day of August, 1982.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Acting Director, Division of Licensing.

[FR Doc. 82-22551 Filed 8-17-82; 8:45 am]

BILLING CODE 7590-01-M

[NUREG-0661, Supplement No. 1]

Mark I Containment Long Term Program Safety Evaluation Report; Issuance and Availability

The U.S. Nuclear Regulatory Commission (NRC) staff has prepared a report entitled, "Mark I Containment Long Term Program Safety Evaluation Report," (NUREG-0661, Supplement No. 1), dated August 1982. This report provides the staff's resolution of the NRC's Task A-7, "Mark I Containment Long Term Program." This issue was identified as an "Unresolved Safety Issue" in the 1978 Annual Report, pursuant to Section 210 of the Energy Reorganization Act of 1974.

This NUREG Report supplements the Mark I Safety Evaluation Report originally published in July 1980 by addressing the outstanding issues relating to the Mark I Long Term Program.

The outstanding issues consisted of the downcomer condensation oscillation load definition and several confirmatory analyses and test programs to justify the adequacy of the load specifications. The staff has concluded, based on a review of the above items, that the outstanding issues have been resolved.

Copies of the report will be available after August 1982. Copies will be sent directly to utilities, utility industry groups and associations and environmental and public interest groups. Other copies will be available for review at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C.; and the Commission's Local Public Document Rooms located in the vicinity of nuclear power plants. Addresses of these Local Public Document Rooms can be obtained from the Chief, Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 492-7536.

Dated at Bethesda, Maryland, this 11th day of August, 1982.

For the Nuclear Regulatory Commission.

Stephen H. Hanauer,

Director, Division of Safety Technology, Office of Nuclear Reactor Regulation.

[FR Doc. 82-22557 Filed 8-17-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-298; License No. DPR-46 and EA 82-46]

Nebraska Public Power District, Cooper Nuclear Station; Order Modifying License Effective Immediately

I

The Nebraska Public Power District (NPPD) (the "licensee") is the holder of Facility Operating License No. DPR-46 (the "license") which authorizes the operation of the Cooper Nuclear Station at steady state reactor core power levels not inexcess of 2381 megawatts thermal (rated power). The facility consists of a boiling water reactor (BWR), located at the licensee's site in Nemaha County, Nebraska.

II

The Commission's regulations specifically, 10 CFR 50.54(s)(2)(i) and Section IV.D.3 of Appendix E to 10 CFR Part 50 (46 FR 63032, December 30, 1981) require each operating nuclear power plant to install and test a prompt public notification system by February 1, 1982. During January 1982 the NRC Region IV Emergency Preparedness Analyst had a telephone conversation with two members of the NPPD management organization concerning the status of this system. He was informed that the prompt public notification system was installed and operational. In a letter to the Region IV Administrator dated February 8, 1982, NPPD reiterated in writing that the system was installed and operational.

On March 9, 1982, the NRC staff had a meeting with members of the NPPD's General Office staff at the plant site to discuss the prompt public notification system. Again, members of the NPPD's staff orally confirmed that the system was installed and operational, and provided an informational handout which also indicated this status. A member of NPPD's staff offered to demonstrate that the system was complete and operational. Accordingly, an NRC representative and the Station Superintendent visited the Nemaha, Nebraska Volunteer Fire Department to verify the status of the mobile sirens at that location. These mobile siren units (32 individual siren units distributed among 6 area volunteer fire departments) were identified by the NPPD as an integral part of the prompt public notification system. During this visit, one mobile siren unit was found still in it shipping carton. In light of this discovery, the Region IV Administrator directed that a special inspection and an investigation be conducted to determine the status of all mobile siren units.

On March 11, 1982 two NRC inspectors made contact with representatives of each of the six volunteer fire departments that had received mobile siren units as part of the prompt public notification system. This inspection effort revealed five mobile siren units in their original cartons and one additional unit missing a component. Moreover, further investigation into this matter found that those departments apparently did not receive training nor instructions as to their role in implementing the required prompt notification system. In addition, there were no written procedures to govern the operation of the mobile siren system. In effect, NPPD failed to comply with the NRC's requirements in the area of prompt public notification. After the March 11, 1982 exit interview conducted to discuss the emergency preparedness exercise, the NRC Region IV Administrator insisted that immediate administrative measures be established to assure that prompt public notificataion of the population within the 10 mile emergency planning zone would take place. A Confirmatory Action Letter was issued on March 12, 1982 to assure that compensatory action would be taken to provide an acceptable interim level of notification pending the modification of the installed system, the development of effective implementing procedures, and the implementation of a training program, to assure full compliance on a long-term basis with the prompt notification system requirement.

The cause of both the noncompliance with the Commission's prompt notification requirements and the inaccurate communications with the Commission appears to be inadequate corporate office management attention to and involvement in completion of the prompt notification system. We understand that the plant management duty-stationed at the site were not involved with management responsibility for installation and testing of the system. This responsibility was assigned to and accepted by management personnel duty-stationed in the corporate offices in Columbus, Nebraska. These personnel apparently failed to define adequate criteria to determine system completion and apparently failed to commit sufficient resources to ensure timely completion of the system. The responsible corporate managers established neither QA audits nor surveillance requirements to monitor installation of the system. Written procedures were not developed for implementation and operation of the system. The MPPD action tracking

system stopped tracking the status of the mobile system in July 1981, notwithstanding that the system was not complete. Information was given to the NRC in January 1982 concerning the status of the system without checking with the project manager or lead engineer to assure its accuracy. The project manager did not question the February 8, 1982 letter to the Region IV Administrator incorrectly stating that the system was installed and operational even though he had information indicating the letter was not accurate. The project manager was not supportive of the lead engineer's requests for assistance to complete system installation in a timely manner nor did he seek additional resources from upper management. Management at all levels in the corporate office left implementation of the system to the lead engineer without instructions as to what was required to complement the system to meet the Commission's requirements. There was no indication that managemnt took any steps on its own initiative to determine that the February 1, 1982 deadline for installation and initial testing of the prompt notification system would be met. The failure to assure that the system was installed, operational, and tested by February 1, 1982 and to be aware of the system's status demonstrates unacceptable performance by NPPD management. This unacceptable level of performance was exacerbated by the repeated inaccurate statements made to the Region IV Administrator regarding the status of the prompt notification system. These matters were discussed in an enforcement conference with Mr. D. W. Hill, two members of the NPPD Board of Directors, and a member of Mr. Hill's staff held with the Regional Administrator on April 12, 1982. In addition, the Director of the Office of Inspection and Enforcement has proposed that civil penalties be imposed for NPPD's failure to implement the prompt notification system in a timely manner and for the material false statements made to the Commission regarding this system's status.

III

The events described in Section II, reveal substantial serious breakdowns in Nebraska Public Power District's management controls related to the Cooper Nuclear Station. Continued operation of the Cooper Nuclear Station requires significant changes in Nebraska Public Power District's control of licensed activities. Accordingly, I have determined that the actions set forth below are required by the public health, safety, and interest, and therefore, should be imposed by an immediately effective order.

IV

In view of the foregoing, pursuant to sections 103 and 161(i) of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Part 2 and 10 CFR Part 50, it is hereby ordered effective immediately that:

Within 30 days of this Order, the licensee shall submit to the Region IV Administrator for review and approval, a comprehensive plan of action that will include an independent appraisal of site and corporate management organizations and functions, and recommendations for improvements in communications, management controls, and oversight. Upon approval of the plan, the plan shall be implemented and the scheduled dates for completion of the milestones shall not be extended without good cause and the concurrence of the Region IV Administrator.

The plan shall include at least the elements itemized below:

(1) An appraisal conducted by an independent organization retained by the licensee to evaluate current organizational responsibilities, management controls, staffing levels and competence, communications systems and practices both at and between the corporate office and the facility. This organization shall be directed to make recommendations for changes in the aforementioned areas that will provide assurance that the licensee will implement NRC requirements.

(2) A description of the appraisal program, the qualifications of the appraisal team, a discussion of how the appraisal is to be documented, and a schedule with appropriate milestones for implementation of the plan.

(3) Actions to assure that future information supplied by Nebraska Public Power District to the NRC, pertaining to analyses, designs, and the compliance of systems important to safety, is complete and accurate.

(4) A system of audits by management representatives aimed at assuring conformance to requirements and continued adherence to changes which result from the reviews identified in items (1) and (3) above.

The licensee shall promptly submit to the Region IV Administrator a copy of the independent evaluation required by item (1) above. In addition, the licensee shall consider the recommendations made in item (1) and provide to the Region IV Administrator, within 30 days of receipt of the evaluation an analysis of each such recommendation and the action to be taken in response to the recommendations. The licensee shall also provide a schedule for accomplishing these actions.

The Administrator of Region IV may relax or terminate in writing any of the preceding conditions for good cause.

V

The licensee may request a hearing on this Order within 30 days of its issuance. A request for a hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request shall also be sent to the Executive Legal Director at the same address. Any request for a hearing shall not stay in the immediate effectiveness of this order.

If a hearing is requested, the Commission will issue an order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such hearing shall be:

Whether on the basis of the matters set forth in Section II of this Order, this Order should be sustained.

In the event that a need for further enforcement action becomes apparent, either in the course of a hearing or any other time, appropriate action will be taken by the Director.

Dated at Bethesda, Maryland, this 9th day of August 1982.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 82-22552 Filed 8-17-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas & Electric Co.; Issuance of Amendment To Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 61 to Provisional Operating License No. DPR-13, issued to Southern California Edison Company and San Diego Gas and Electric Company (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Unit No. 1 (the facility) located in San Diego County, California. The amendment is effective 30 days from its date of issuance.

The amendment approves changes to the Appendix A Technical Specifications and Bases which

incorporate revised Section 6.11, "Radiation Protection Program."

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact that pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated April 22, 1982, (2) Amendment No. 61 to License No. DPR-13, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California 92676. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 11th day of August, 1982.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 82-22553 Filed 8-17-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas & Electric Co. (San Onofre Nuclear Generating Station, Unit No. 1); Order Confirming Licensee Commitments on Seismic Upgrading

I.

The Southern California Edison Company (SEC) and the San Diego Gas and Electric Company (the licensees) hold Provisional Operating License No. DPR-13, which authorizes Southern California Edison Company to operate the San Onofre Nuclear Generating Station, Unit No. 1 (the facility) at power levels not in excess of 1347 megawatts (thermal) rated power. The facility, which is located at the licensees' site in San Diego County, California, is a pressurized water reactor (PWR) used for the commercial generation of electricity.

II.

The San Onofre Nuclear Generating Station, Unit No. 1, is one of eleven older operating plants that are part of the Systematic Evaluation Program (SEP). The purpose of the SEP is to evaluate these plants against current licensing criteria to provide an integrated and balanced decision on backfitting. One of the SEP topics is reevaluation of the capability of San Onofre Unit 1 to withstand seismic events.

The San Onofre Unit 1 was licensed by the Atomic Energy Commission on March 27, 1967. In the original seismic design, components, systems and structures which were designated as important to the nuclear safety of the plant were designated Seismic Category A. Specifically, structures, systems and components associated with the reactor coolant system, boron injection, safety injection system, and residual heat removal were designed as Seismic Category A. The design basis used for Seismic Category A was what in today's terminology would be consistent with the 0.25g Housner Spectra Operating Basis Earthquake (OBE) and the 0.5g Housner Spectra Safe Shutdown Earthquake (SSE). The Turbine Building extensions, which contain Seismic Category A systems and components, were designated Seismic Category B and designed to a maximum ground acceleration of 0.2g (static force criteria). Seismic Category B is a classification specified by the licensees for components, systems, and structures that are important to the continuity of power generation or whose contained activity is such that release would not constitute a hazard.

Since the original plant was constructed, various structures and systems have been added to the plant. The licensees designed these new items to higher seismic levels to be consistent with the criteria being applied in the design of Units 2 and 3. Specifically, the sphere enclosure building and the diesel generator and its associated structures, system and components were designed to a 0.67g modified Newmark response spectra (more conservative than the Housner Spectra).

In 1973, the licensees initiated a program to reevaluate and modify as necessary the capability of San Onofre Unit 1 to withstand seismic events. The criteria for this program were the 0.67g Housner Spectra. The first phase of this program consisted of reevaluating (1) systems and components to prevent a design basis loss of coolant accident, including the main reactor coolant loop and Nuclear Steam Supply System (NSSS) components, and (2) the reactor building and the containment sphere. Based upon their reanalyses, the licensees concluded that the containment sphere, the reactor building and structural steel framing have resistance capacities in excess of those required to meet 0.67g Housner Spectra. As a result, the licensees concluded that modifications to these structures were not necessary. However, support modifications in the form of additional seismic restraints were required to meet allowable stresses for several of the larger NSSS components which were base supported. These modifications were implemented during an outage in 1976-1977.

Following initiation of the SEP in 1978, subsequent phases of the seismic reevaluation program were incorporated into the SEP. This program is proceeding in three phases: (1) Reevaluation of balance-of-plant structures; (2) reevaluation of piping and mechanical equipment required to shut down the plant; and (3) reevaluation of piping and machanical equipment required to mitigate the consequences of accidents. The earthquake input being used for this program is the 0.67g Housner response spectra.

The NRC staff issued letters dated August 4, 1980 and April 24, 1981 to the licensees requesting details of the seismic reevaluation program including the scope of review, the evaluation criteria, the schedule for completion and justification for continued operation in the interim until completion of the seismic reevaluation program. The licensees responded by letters dated September 24, 1980, February 23, April 24, July 7, August 11, September 28, October 5, 1981 and October 19, 1981. The NRC Staff evaluated the licensee's responses and issued a Safety Evaluation Report of the Interim Seismic Adequacy for San Onofre Unit 1 dated November 16, 1981. This report addressed the licensees' conclusion that continued operation is acceptable in the interim until the seismic reevaluation, and any necessary upgrading, is complete. The NRC staff agreed with the licensees' April 28, 1980 basis for continued operation for those systems, structures, and components which were originally designed to meet the 0.5g Housner Spectra as ground motion input; however, the staff concluded that certain modifications were necessary, in

the near term, to upgrade the North Turbine Building Extension and the West Feedwater Heater Platform which were originally designed to 0.2g static. The licensees made modifications to upgrade these structures during the current outage which began on February 27, 1982.

At a meeting with the NRC staff on May 3, 1982, the licensees presented the results of their reevaluation, using the 0.67g Housner Spectra, of the balance of plant mechanical equipment and piping required to shutdown the plant. The results of the licensees' evaluation as documented in their April 30, 1982 submittal showed high stress values certain equipment, piping and their supports. These high stress values for caused the NRC staff to raise a concern as to whether existing piping, pipe supports and mechanical equipment including its anchorage meet the original licensing basis for San Onofre Unit 1. This concern was the subject of a meeting between the licensees and the NRC staff on May 20, 1982. At the end of this meeting, the NRC staff concluded that the licensees needed to provide information that demonstrates that the facility meets its licensed design basis before the plant would be permitted to restart from the current outage.

III.

By letter dated June 15, 1982 as supplemented by letter dated June 24, 1982, the licensees stated that they intend to complete the analyses and make modifications to the facility to meet the 0.67g Housner Spectra ground motion rather than to demonstrate that the facility meets its original 0.5g Housner Spectra design basis. The licensees committed to extend the present outage until the modifications are completed to upgrade San Onofre Unit No. 1 to 0.67g Housner Spectra ground motion. In view of the foregoing information regarding the seismic capability of the facility, I have determined that the licensees' commitment is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV.

Accordingly, pursuant to Sections 103 and 161i of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensees shall:

Maintain San Onofre Unit 1 in the shutdown condition until modifications described in their submittal dated June 15, 1982 as supplemented by letter dated June 24, 1982 are completed and NRC approval is obtained for restart.

V.

The licensees may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. A request for a hearing shall be addressed to the Director, Division of Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission. Washington, D.C. 20555. A copy shall also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by the licensees, the Commission will issue an Order designating the time and place of any such hearing. Resumption of operation on terms consistent with this Order need not be stayed by the pendency of any proceeding on this Order.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether, as set forth in Section IV of this Order, the licensees should maintain San Onofre Unit 1 in the shutdown condition until modifications described in their submittal dated June 15, 1982 as supplemented by letter dated June 24, 1982 are completed and NRC approval is obtained for restart.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 11th day of August, 1982.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 82-22554 Filed 8-17-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-537]

United States Department of Energy Project Management Corporation, Tennessee Valley Authority (Clinch River Breeder Reactor Plant); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for this construction permit proceeding. As reconstituted, the Appeal Board for this proceeding will consist of the following members:

Stephen F. Eilperin, Chairman
Dr. W. Reed Johnson
Gary J. Edles

Dated: August 12, 1982.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 82-22558 Filed 8-17-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-339]

Virginia Electric & Power Co.; Issuance of Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 26 to Facility Operating License No. NPF-7 issued to the Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Unit No. 2 (the facility) located in Louisa County, Virginia. The amendment is effective as of its date of issuance.

The amendment revises the implementation dates for License Conditions 2.C.(21)(d), 2.C.(21)(e) and 2.C.(21)(i), suparts iii and v, thereto from July 1, 1982 to January 1, 1983. These License Conditions pertain to NUREG-0737 Action Items II.B.2 (Plant Shieling), II.B.3 (Post Accident Sampling) and II.F.1 (Accident Monitoring Instrumentation), respectively. The Amendment also revises the implementation date of License Condition 2.C.(21)(i), subpart iv, thereto, from July 1, 1982 to the second refueling outage. This License Condition pertains to NUREG-0737 Action Item II.F.1 (Accident Monitoring System).

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated May 26, June 4, and June 14, 1982; (2) Amendment No. 26 to Facility Operating License No. NPF-7; and (3) the Commission's related Safety Evaluation. These items are available

for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Board of Supervisor's Office, Louisa County Courthouse, Louisa, Virginia 23093 and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901. A copy of items (2) and (3) may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 10th day of August, 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 82-22555 Filed 8-17-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-27]

Washington State University; Renewal of Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 10 to Facility Operating License No. R-76, issued to Washington State University (the licensee), which renews the license for operation of the TRIGA reactor (the facility) located on the University's campus in Pullman, Washington. The facility is a research reactor that has been operating at power levels not in excess of 1000 kilowatts (thermal).

The amendment extends the duration of Facility License No. R-76 for twenty yers from the date of issuance of this amendment.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I. Those findings are set forth in the license amendment. Notice of the proposed issuance of this action was published in the **Federal Register** on July 16, 1979 at 44 FR 41360. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared an Environmental Impact Appraisal for the renewal of the Facility Operating License and has concluded that an Environmental Impact Statement for this particular action is not warranted because there will be no significant environmental impact attributable to the action.

For further details with respect to this action, see (1) the application for amendment dated May 15, 1979, as supplemented by filings dated May 15, 1979; May 29, 1979; June 4, 1979; June 21, 1979; February 4, 1981; March 3, 1981; and April 26, 1982; (2) Amendment No. 10 to License No. R-76; and (3) the Commission's related Safety Evaluation Report and Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C.

A copy of items (2) and (3) may be obtained upon request from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 11th day of August 1982.

For the Nuclear Regulatory Commission.

Harold Bernard,

Acting Branch Chief, Standardization and Special Projects Branch, Division of Licensing.

[FR Doc. 82-22556 Filed 8-17-82; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Safety Philosophy, Technology and Criteria/ Class-9 Accidents; Meeting

The ACRS Subcommittee on Safety Philosophy, Technology and Criteria/ Class-9 Accidents will hold a meeting on September 8, 1982, in Room 1118, 1717 H Street, NW, Washington, DC. The Subcommittee will review issues regarding severe accident rulemaking and implementation of safety goals.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions which will be closed to discuss information provided in confidence by a foreign source. (Sunshine Act Exemption 4). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Wednesday, September 8, 1982—8:30 a.m. until the conclusion of business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Gary Quittschreiber (telephone 202/634-3267) or the Staff Engineer, Mr. Michael Griesmeyer between 8:15 a.m. and 5:00 p.m., e.d.t.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to discuss information provided in confidence by a foreign source. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: August 11, 1982.

Samuel J. Chilk,

Acting Advisory Committee Management Officer.

[FR Doc. 82-22559 Filed 8-17-82; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on AC/DC Power Systems; Meeting

The ACRS Subcommittee on AC/DC Power Systems will hold a meeting on September 8, 1982, Room 762, 1717 H Street, NW, Washington, DC. The Subcommittee will review the status of the NRC's implementation of the recommendations of NUREG-0666, the status of the ongoing work on station blackout, and matters related to the reliability of AC/DC power systems.

In accordance with the procedures outlined in the **Federal Register** on

September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss proprietary information. One or more closed sessions may be necessary to discuss such information. (Sunshine Act Exemption 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Wednesday, September 8, 1982—8:30 a.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding the topics to be discussed.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Richard Savio (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EDT.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: August 11, 1982.

Samuel J. Chilk,

Acting Advisory Committee Management Officer.

[FR Doc. 82-22289 Filed 8-17-82; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on September 7, 1982, Room 1167, 1717 H Street, NW, Washington, DC. The Subcommittee will review the final draft of the NRC Staff's Integrated Human Factors Program Plan.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Tuesday, September 7, 1982, 1:00 p.m. until the conclusion of business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, David Fischer (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m., EDt.

Dated: August 11, 1982.

Samuel J. Chilk,

Acting Advisory Committee Management Officer.

[FR Doc. 82-22287 Filed 8-17-82; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Washington Public Power Supply System Unit 2; Meeting

The ACRS Subcommittee on Washington Public Power Supply System Unit 2 (WPPSS) will hold a meeting on September 2 and 3, 1982, at the Holiday Inn, 1515 George Washington Way, Richland, WA. The Subcommittee will review the application of the Washington Public Supply System for an operating license for Unit 2.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statement should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statments.

The entire meeting will be open to public attendance except for those sessions which will be closed to protect proprietary information (Sunshine Act Exemption 4). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Thursday, September 2, 1982—1:00 p.m. until the conclusion of business

Friday, September 3, 1982—8:30 a.m. until the conclusion of business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Washington Public Power Supply System, the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Gary Quittschreiber (telephone 202/634–3267) or the Staff Engineer, Mr. Michael Griesmeyer between 8:15 a.m. and 5:00 p.m., EDT.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to protect

proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: August 11, 1982.

Samual J. Chilk,

Acting Advisory Committee Management Officer.

[FR Doc. 82-22288 Filed 8-17-82; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Acid Rain Peer Review Panel; Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), it is hereby determined that the establishment of the Acid Rain Peer Review Panel is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, Office of Science and Technology Policy, by the Presidental Science and Technology Advisory Organization Act of 1976 and other applicable law. This determination follows consultation with the General Services Administration, pursuant to Section 9(a)(2) of the Federal Advisory Committee Act and Office of Management and Budget (OMB) Circular Number A-63, Revised.

1. Name of Group: Acid Rain Peer Review Panel.

2. Purpose: The purpose of the Acid Rain Peer Review Panel is to review the reports of the Working Groups directed by the August 5, 1980 Memorandum of Intent (MOI) on Transboundary Air Pollution between the U.S. and Canada taking into account currently available scientific and technical knowledge on the production, transport, transformation, and deposition of pollutants; the effect of these pollutants on our surroundings, and the economics and engineering estimates of control technology performance.

Provide an assessment of:

(a) Whether the Working Groups have fulfilled their charters under the Memorandum of Intent;

(b) Whether the Working Groups have utilized all significant research and data impacting on their topics in formulating their reports;

(c) Whether the Working Groups' reports:

(1) Clearly identify their assumptions,

(2) Present and discuss alternate theories and explanations,

(3) Provide support of conclusions and recommendations by the data and other evidence considered, and

(4) Address the uncertainties in the available knowledge and its impact on their recommendations.

Provide an independent assessment of the uncertainties in available scientific and technical information on which recommendations of the working groups are based.

Recommend further research and monitoring tasks which will reduce uncertainties in the scientific and technical knowledge.

Provide a written report, with executive summary addressing the above charter.

3. Effective Date of Establishment and Duration: The establishment of the Acid Rain Peer Review Panel is effective upon filing of the charter with the Director, OSTP, and with the standing committees of Congress having legislative jurisdiction over the Office of Science and Technology Policy. The duration of this panel shall be for two years from the date of approval unless sooner terminated.

4. Membership: Members of the Acid Rain Peer Review Panel shall be appointed by the Director, Office of Science and Technology Policy. That appointment shall be subject to review every 365 days unless earlier terminated. The Panel shall consist of no more than 12 members. Additional technical experts will be utilized as needed to constitute subgroups of the Panel.

5. Advisory Group Operation: The Acid Rain Peer Review Panel operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463), OMB Circular No. A63, Revised, and other directives and instructions issued in implementation of the Act.

Jerry D. Jennings,

Executive Director.

[FR Doc. 82-22541 Filed 8-17-82; 8:45 am]

BILLING CODE 3170-01-M

SMALL BUSINESS ADMINISTRATION

Region VI Advisory Council Meeting

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of the lower Rio Grande Valley of Texas, will hold a public meeting at 9:00 a.m., on Thursday, September 2, 1982, at the McAllen Chamber of Commerce Board Room, McAllen, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Rodney W. Martin, Acting District Director, U.S. Small Business Administration, 222 E. Van Buren, Suite 500, Harlingen, Texas—(512) 423-8933.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

August 12, 1982.

[FR Doc. 82-22571 Filed 8-17-82; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council; Public Meeting

The Small Business Administration, Region VII Advisory Council, located in the geographical area of Omaha, Nebraska, will hold a public meeting at 10:00 a.m., on Thursday, August 26, 1982, at the SBA Office, 2nd Floor, 19th and Farnam, Omaha, NE 68102, 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 Rick Budd, District Director, U.S. Small Business Administration, 19th and Farnam, Omaha, NE 68102, (402) 221-3620.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

August 12, 1982.

[FR Doc. 82-22570 Filed 8-17-82; 8:45 am]

BILLING CODE 8025-01-M

Region VII Kansas City District Advisory Council; Public Meeting

The Small Business Administration Region VII—Kansas City District Advisory Council, located in the geographical area of Kansas City, Missouri, will hold a public meeting at 9:30 a.m., Friday, September 10, 1982, in the Training Room, 3rd Floor, Kansas City District Office, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Patrick E. Smythe, District Director, U.S. Small Business Administration, 818 Grand Avenue, 4th Floor, Kansas City, Missouri—(816) 374-5557.

Dated: August 13, 1982.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

[FR Doc. 82-22567 Filed 8-17-82; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting; Public Meeting

The Small Business Administration Region VIII Advisory Council, located in

the geographical area of Fargo, North Dakota, will hold a public meeting at 9:30 a.m., Thursday, September 2, 1982, at the Federal Building, Room 319, 657 Second Avenue North, Fargo, North Dakota, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Robert L. Pinkerton, District Director, U.S. Small Business Administration, 657 Second Avenue North, Fargo, North Dakota 58102—(701) 237–5771, extension 5131.

Dated: August 12, 1982.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

[FR Doc. 82–22563 Filed 8–17–82; 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 Sioux Falls, South Dakota, will hold a public meeting on Tuesday, August 31, 1982, from 9:00 a.m. to 3:00 p.m., at the Community Room, First National Bank in Sioux Falls, 100 South Phillips, Sioux Falls, South Dakota 57102, to discuss such business as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Chester B. Leedom, District Director, U.S. Small Business Administration, Suite 101 Security Building, 101 South Main, Sioux Falls, South Dakota 57102, 605/336–2980, Ext. 231.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

August 13, 1982.

[FR Doc. 82–22568 Filed 8–17–82; 8:45 am]

BILLING CODE 8025–01–M

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, D.C., will hold a public meeting at 9:00 a.m. until 5:00 p.m., Wednesday, September 15, 1982, at the Earle Cabell Federal Building, 1100 Commerce Street, Room 7–A, Space 23, Dallas, Texas 75242, to discuss such business as may be presented by the Committee members. The meeting will be open to the interested public, however, space is limited.

Persons wishing to present written statements should notify Mr. Joseph Luna, Office of the Associate Administrator for Minority Small Business and Capital Ownership Development, Small Business Administration, Room 317, 1441 L Street, N.W., Washington, D.C. 20416, (202) 653–6475, in writing or by telephone no later than September 7, 1982.

Dated: August 12, 1982.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

[FR Doc. 82–22564 Filed 8–17–82; 8:45 am]

BILLING CODE 8025–01–M

[License No. 09109–0316]

Wells Fargo Equity Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1982)), for a license to operate as a small business investment company, under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*) by:

Applicant: Wells Fargo Equity Corporation
Address: 475 Sansome Street, San Francisco, California 94144
Proposed Private Capitalization: $5 million
Area of Operations: California
Officers, Directors and Stockholder:
Chairman of the Board
John F. Grundhofer, Wells Fargo Bank, N.A., 660 Newport Center Dr., Newport Beach, CA
President and General Manager
Richard N. Borenstein, Wells Fargo Bank, N.A., 475 Sansome Street, San Francisco, CA
Vice President
Jean Yves E. Gueguen, Wells Fargo Bank, N.A., 475 Sansome Street, San Francisco, CA
Treasurer
Valerie Blackmer, Wells Fargo Bank, N.A., 475 Sansome Street, San Francisco, CA
Secretary
Guy Rounsaville, Jr., Wells Fargo Bank, N.A., 475 Sansome Street, San Francisco, CA
Assistant Secretary
Donald A DeCoss, Wells Fargo & Company, N.A., 420 Montgomery Street, San Francisco, CA
Director
Lewis W. Coleman, Wells Fargo Bank, N.A., 464 Califronia Street, San Francisco, CA
Director
Richard M. Lingua, Wells Fargo Bank, N.A., 464 California Street, San Francisco, CA
Director
Richard Oppenheimer, Wells Fargo Bank, N.A., 464 California Street, San Francisco, CA
Director
Alan J. Pabst, Wells Fargo & Company, N.A., 475 Sansome Street, San Francisco, CA
Investment Advisor
Leland Dake, 235 Montgomery Street, San Francisco, CA
Wells Fargo & Company, 100 percent Stockholder

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may not later than 15 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in San Francisco, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 11, 1982.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 82–22569 Filed 8–17–82; 8:45 am]

BILLING CODE 8025–01–M

[License No. 06/10–0076]

Central Texas Small Business Investment Corp.; Filing of Application for Transfer of Control of a Licensed Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to 107.701 of the Regulations governing small business investment companies (13 CFR 107.701 (1982)), to transfer control of Central Texas Small Business Investment Corporation (Central), 514 Austin Avenue, Waco, Texas 76703, a Federal Licensee under the Small Business Investment Act of 1958, as amended (Act).

Central was licensed on March 28, 1962, and has private capital of $300,000. The Republic National Bank Corporation (Republic), 1800 Republic Bank Dallas Building, Dallas, Texas 75222, a bank holding company proposes to acquire 100% (less Directors'

Qualifying Shares) of Citizens National Bank of Waco (Bank), 514 Austin Avenue, Waco, Texas 76703. The Bank owns all the outstanding common stock of Central. No change in the officers and directors of Central is contemplated.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is hereby given that any person may not later than 10 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A similar Notice shall be published in a newspaper of general circulation in the Waco, Texas area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 82-22566 Filed 8-18-82; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2059]

Illinois; Declaration of Disaster Loan Area

Vernon, West Deerfield, and Deerfield Townships of Lake County and Wheeling, Northfield, and New Trier Townships of Cook County in the State of Illinois constitutes a disaster loan area as a result of damage caused by heavy rains and flooding which occurred on July 21–22, 1982. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on October 12, 1982, and for economic injury until May 11, 1983, at: U.S. Small Business Administration, 219 South Dearborn Street, Room 438, Chicago, Illinois 60604, or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

	Percent
Homeowners with credit available elsewhere	14⅞
Homeowners without credit available elsewhere	7⅞
Businesses with credit available elsewhere	16
Businesses without credit available elsewhere	8
Businesses (EIDL) without credit available elsewhere	8
Other (non-profit organizations including charitable and religious organizations)	11½

It should be noted that assistance for agricultural enterprises is the primary responsibility of the Farmers Home Administration as specified in Pub. L. 96–302.

Information on recent statutory changes (Pub. L. 97–35, approved August 13, 1981) is available at the above-mentioned office.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: August 11, 1982.

Peter Terpeluk, Jr.,

Acting Administrator.

[FR Doc. 82-22565 Filed 8-17-82; 8:45 am]

BILLING CODE 8025-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 160
Wednesday, August 18, 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

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Wednesday, August 18, 1982.

LOCATION: Third floor hearing room, 1111 18th Street NW., Washington, D.C.

STATUS: Open to the public.

MATTER TO BE CONSIDERED: Fiscal year 1984 Budget. The staff and the Commission will discuss issues related to the development of a Budget for Fiscal Year 1982.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Deputy Secretary, Office of the Secretary, Suite 342, 5401 Westbard Avenue, Bethesda, MD 20207; Telephone (301) 492–6800.

[S–1182–82 Filed 8–16–82; 9:20 am]

BILLING CODE 6355–01–M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, August 23, 1982, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for consent to purchase assets and assume liabilities and to establish branches:

Hardin County Savings Bank, Eldora, Iowa, for consent to purchase the assets of and assume the liability to pay deposits made in Union-Whitten State Savings Bank, Union, Iowa, and to establish the two offices of Union-Whitten State Savings bank as branches of Hardin County Savings Bank.

La Jolla Bank & Trust Company, La Jolla, California, for consent to purchase the assets and the assume the liability to pay deposits made in the San Diego and Poway branches of Union Bank, Los Angeles, California, and to establish those offices as branches of La Jolla Bank & Trust Company.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,330–L—Franklin National Bank, New York, New York

Case No. 45,343–L—Reserves for Losses, 108 Open Liquidation Cases

Memorandum and Resolution re: American Bank & Trust, Orangeburg, South Carolina

Memorandum and Resolution re: Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Bronson, Bronson, & McKinnon, San Francisco, California, in connection with the receivership of United States National Bank, San Diego, California.

Memorandum and Resolution re: Final amendments to Part 341 of the Corporation's rules and regulations, entitled "Registration of Securities Transfer Agents," governing registration of insured nonmember banks, or subsidiaries of such banks, that act as transfer agents for qualifying securities under Section 12 of the Securities Exchange Act of 1934, which would add a section containing definitions, add a section dealing with deregistration of transfer agents, extend the time for filing amendments, provide a new format, and conform the regulations to a simplified uniform Form TA–1 for registration of such agents.

Memorandum and Resolutions re: (1) Final amendments to Part 348 of FDIC's rules and regulations, entitled "Management Official Interlocks", implementing the Depository Institution Management Interlocks Act, which would conform Part 348 to the recently enacted Pub. L. 97–110 (a) by permitting a management official whose service in an interlocking relationship is grandfathered under the Act to continue such service for the duration of the ten-year grandfather period provided in the Act notwithstanding changes in circumstances and (b) by permitting a management official of a depository organization and a nondepository organization to continue such service after the nondepository organization becomes a diversified savings and loan holding company; and (2) proposed amendments to Part 348 which would (a) permit persons who terminated grandfathered interlocks in the past because of a change in circumstances to resume the interlock for the duration of the grandfather period under the Act; (b) simplify the procedures for obtaining exemptions from the Act's prohibitions and extensions of time to permit compliance with the Act; (c) ease the burden of the Act on depository institution holding companies by redefining the terms "office"and "total assets;" (d) exclude from certain of the Act's prohibitions management officials whose functions relate exclusively to retail merchandising and manufacturing; (e) broaden the circumstances under which the "disruptive management loss" exemption from the Act's prohibitions is available; (f) clarify the circumstances that require termination of non-grandfathered management official interlocks; and (g) provide that interlocks between depository organizations and nondepository organizations that become diversified savings and loan holding companies, or their subsidiaries, need not be broken until November 10, 1988, despite the occurrence of changes in circumstances.

Memorandum and Resolution re: Delegation of authority to the General Counsel to appoint agents for the service of process.

Appeal by John A. Joyce from an initial denial of a request for records pursuant to the Freedom of Information Act.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications or requests

approved by the Director or Associate Director of the Division and the various Regional Directors pursuant to authority delegated by the Board of Directors.
Report of the Director, Division of Liquidation:
Memorandum re:
Reports Under Delegated Authority
Status of Approved Committee Cases
Report of the Director, Division of Accounting and Corporate Services:
Memorandum re: Investment Management Report—June 30, 1982
Reports of the Director, Office of Corporate Audits:
Audit Report re: Administration of Major Employee Benefits Programs (Dated June 23, 1982)
Audit Report re: DBS Examination Policies and Procedures (Dated June 28, 1982)
Report re: Status of Auditee Corrective Actions (Dated August 9, 1982)

Discussion Agenda:

Recommendation regarding a proposed response to a request by the Securities and Exchange Commission for the Corporation's opinion on the applicability of the Glass-Steagall Act to subsidiaries of insured nonmember banks.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: August 16, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–1188–82 Filed 8–16–82; 2:40 pm]

BILLING CODE 6714–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, August 23, 1982, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: August 16, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–1187–82 Filed 8–16–82; 2:40 pm]

BILLING CODE 6714–01–M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Monday, August 23, 1982.

PLACE: 20th Street and Consititution Avenue, N.W., 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: August 13, 1982.

William W. Wiles,

Secretary of the Board.

[S–1179–82 Filed 8–13–82; 4:56 pm]

BILLING CODE 6210–01–M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Friday, August 20, 1982.

PLACE: Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: Summary Agenda: Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposals regarding Regulation Z (Truth in Lending):

(1) Determination whether to grant exemptions for Maine and Connecticut; and

(2) Publication for comment of the applications for exemptions for Massachusetts, Oklahoma, and Wyoming.

2. Proposed amendment to Regulation Y (Bank Holding Companies and Change in Bank Control) to permit bank holding companies to engage in certain data processing and data transmission activities. (Proposed earlier for public comment; Docket No. R–0363)

Discussion Agenda:

3. Regulations D (Reserve Requirements of Depository Institutions) and Q (Interest on Deposits) issues relating to (1) reserve requirements applicable to new deposit intruments; (2) the ceiling on corporate savings deposits; (3) automatic renewal of repurchase agreements; and (4) purchase and sale of small denomination time deposits in the secondary market.

4. Consideration of future space needs for the Federal Reserve Bank of Dallas.

5. Any items carried forward from a previously announced meeting.

Note.—This meeting will 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: August 13, 1982.

William W. Wiles,

Secretary of the Board.

[S–1180–82 Filed 8–13–82; 4:56 pm]

BILLING CODE 6210–01–M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 12:00 noon, following a recess at the conclusion of the open meeting on Friday, August 20, 1982.

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: August 13, 1982.

William W. Wiles,

Secretary of the Board.

[S–1181–82 Filed 8–13–82; 4:56 pm]

BILLING CODE 6210–01–M

7

LEGAL SERVICES CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 34076, August 5, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m. to 5 p.m., Tuesday, August 17, 1982.

CHANGE IN THE MEETING: Cancelled.

CONTACT PERSON FOR MORE INFORMATION: LeaAnne Bernstein, Office of the President, (202) 272–4040.

Date issued: August 13, 1982.

Gerald M. Caplan,

Acting President.

[S–1186–82; Filed 8–16–82; 10:44 am]

BILLING CODE 6820–35–M

8

NATIONAL TRANSPORTATION SAFETY BOARD

[NM–82–20]

TIME AND DATE: 9 a.m., Tuesday, August 24, 1982.

PLACE: Board Room, 800 Independence Ave., S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Marine Accident Report:* Sinking of the M/V OXY PRODUCER in the Atlantic Ocean near the Azores Islands, September 20, 1981, and proposed recommendations.
2. *Pipeline Accident Report:* Missouri Power and Light Company, Natural Gas Fire, Centralia, Missouri, January 28, 1982, and proposed recommendations.
3. *Aircraft Accident Report:* Midair Collision, USAF F–111D and Bldg. Contractors, Inc., Cessna TU–20G, Clovis, New Mexico, February 6, 1980, and proposed recommendation letters.
4. *Recommendations* to manufacturers of multiengine turbine-powered airplanes and rotorcraft.
5. *Recommendation* to the Federal Aviation Administration regarding flightcrew coordination.
6. *Letter* to the Federal Aviation Administration regarding the closeout of recommendation A–82–30.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202)382–6525.

August 13, 1982.

[S–1185–82 Filed 8–16–82; 10:44 am]

BILLING CODE 4910–58–M

9

PAROLE COMMISSION

TIME AND DATE: 9 a.m. to 5:30 p.m., Friday, September 24, 1982.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 12 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.17 and appealed pursuant to 28 CFR 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission (301) 492–5987.

[S–1183–82 Filed 8–16–82; 10:44 am]

BILLING CODE 4410–01–M

10

SYNTHETIC FUELS CORPORATION

ACTION: Amendment of notice of meeting.

SUMMARY: Interested members of the public are advised that the description of matters to be considered at the meeting of the Board of Directors of the Synthetic Fuels Corporation scheduled for 9:45 a.m., August 19, 1982 and announced in the **Federal Register** on August 12, 1982, has been amended to include consideration of the election of officers of the Corporation by the Board of Directors. This amendment is published in accordance with the requirements of section 116(f)(1) of the Energy Security Act (42 U.S.C. 8712(f)(1)) and section 4(d) of the Corporation's Statement of Policy on Public Access to Board Meetings.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Mr. Owen J. Malone, Office of General Counsel (202) 822–6336.

August 13, 1982.

United States Synthetic Fuels Corporation.

Edward E. Noble,

Chairman of the Board.

[S–1184–82 Filed 8–16–82; 10:44 am]

BILLING CODE 0000–00

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Part II

Environmental Protection Agency

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL 2109-4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today finalizing an amendment to the hazardous waste management regulations under the Resource Conservation and Recovery Act that defines when a container which has held a hazardous waste is considered "empty." On November 25, 1980 the Agency published an interim final amendment which defined "empty container." Today, after reviewing the public comments on the interim final rule, the Agency is finalizing that rule with one change. The change allows the use of a weight measurement as an alternative to a depth measurement in determining whether a container is empty.

DATES: Final rule effective August 18, 1982.

ADDRESSES: The public docket for this final rule is located in Room 2637, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The public docket is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, except on legal holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information contact Claire Welty, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9187.

SUPPLEMENTARY INFORMATION:

I. Background

On February 26 and May 19, 1980, EPA promulgated the first phase of regulations implementing the hazardous waste management system under Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA). These regulations are published in Title 40 of the *Code of Federal Regulations* (CFR) in Parts 260 to 267 and 122 to 124. Among other things, these regulations define when a solid waste becomes a hazardous waste and is therefore subject to RCRA controls and, additionally, when a hazardous waste ceases to be a hazardous waste and therefore is no longer subject to RCRA Subtitle C requirements. The Agency received numerous comments and questions concerning these provisions. In particular, the Agency received many questions on how the regulations applied to containers which had formerly held hazardous waste: for example, whether an emptied container which previously held hazardous waste was subject to RCRA control, and at what point a container was considered "empty."

In response to these questions, EPA clarified these issues in the form of a preamble discussion, and specifically amended Part 261 to address regulation of so-called "empty" containers (see 45 FR 78524, November 25, 1980). In the interim final amendment, EPA provided a definition of "empty container" (see 40 CFR 261.7) and clearly specified that the hazardous waste remaining in an "empty" container was not subject to the hazardous waste regulations.

The definition of empty container in the November 25, 1980 **Federal Register** notice was divided into three parts and was keyed to the type of waste in the container. The three categories of "empty" containers were as follows:

(1) *Containers that have held hazardous wastes other than gases and acutely hazardous materials.* An empty container or an empty inner liner of a container is one from which all wastes or other materials have been removed that can be removed using the practices commonly employed to remove the specific materials from that type of container, e.g., pouring, pumping, or aspirating, but in no case can more than 2.5 centimeters (1 inch) remain on the bottom of the container; or, in the case of a lined container, an empty container is one which has had the inner liner removed.

(2) *Containers that have held acutely hazardous materials.* An empty container is one that has been triple rinsed with an appropriate solvent, or cleaned using another method shown to achieve equivalent removal; or, in the case of a lined container, has had the inner liner removed.

(3) *Compressed gas containers*—An empty container is one which has been opened to atmospheric pressure.

In the same **Federal Register** notice, EPA also indicated that although it believed that the small amount of hazardous waste residue that remains in individual empty, unrinsed containers does not pose a substantial hazard to human health or the environment while in the containers, the Agency was concerned that drum reconditioners and other facilities that clean or otherwise handle large numbers of "empty" containers may accumulate and treat or dispose of significant amounts of unregulated residue. EPA, therefore, offered three options for control of these residues and also requested public comment on these options. Specifically, the options which EPA outlined for control of these residues were as follows:

1. Triple rinsing for all containers.
2. Regulation of the residue when it is removed from the container.
3. Limitation on the amount of unregulated residue (regulation only of those persons who handle large amounts of hazardous waste residue in, or removed from, empty containers).

Although the amendment published on November 25, 1980 was written in direct response to public comment on the May 19, 1980 regulations, EPA believed that it was appropriate to request comments on the provisions set forth in §§ 261.7 and 261.33(c) and the three options for regulating residues in empty containers. The remainder of this preamble discusses the comments received on the interim final rule and EPA's response to those comments. (See the preamble to the November 25, **Federal Register** for details on EPA's basis for defining empty container and the options for regulating residues (45 FR 78526-78527).)

II. Comments on Interim Final Rule and EPA Response

EPA received approximately 30 comments on the §§ 261.7 and 261.33(c) provisions concerning empty containers. The majority of the commenters appeared to favor these amendments, pointing out that a definition of "empty" was necessary to make it clear that containers which have previously held hazardous waste and meet the definition of "empty" no longer contain residues subject to regulation under RCRA.

Commenters suggested two major changes to the definition of empty container: (1) A weight alternative to the "one-inch rule" and (2) special rules for ignitable liquids. In addition, they requested the folowing: (1) A clarification of the provisions governing disposal of gas residues; (2) an explanation for the more stringent regulation of empty containers that have held materials listed in § 261.33(e); (3) a clarification of whether triple rinsing constitutes "treatment" as defined by RCRA; (4) instructions on manifesting non-empty tank trucks back to a generator which is not a treatment, storage, or disposal facility (TSDF); and (5) information on the impact of the amendment on small businesses. Finally, many of the commenters

addressed the three options which EPA had outlined for regulation of residues in empty containers.

A. Amendment and Clarification of the "One-inch Rule"

Under § 261.7(b)(1) an empty container for most hazardous wastes is defined as one that is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and

(ii) No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner.

EPA received a few comments which requested that EPA provide an equivalent weight alternative to this "one-inch" rule, namely 3 percent of the total weight of the contents of the container. The commenters pointed out that the residue in the bottom of a container is often difficult or even impossible to measure due to the shape of the container (e.g., rounded bottoms) or due to the position of the opening of the container. They indicated that a weight alternative would be more reasonable because large containers (e.g., cargo tanks) of commercial chemicals are regularly weighed both for determining tare weight and for determining how much material has been used before the containers are discarded.

EPA agrees that a weight alternative to the one-inch rule is workable in cases when a container is routinely weighed. There is nothing in the § 261.7 rule, however, that precludes substituting an equivalent weight measurement for the one-inch measurement to determine the amount of waste remaining in a container. For example, the weight of 3 percent of the contents of a flat-bottomed 55-gallon drum standing on end (36 inches high and 22.5 inches in diameter) is equivalent to one inch of residue in that drum. The percentage weight remaining in a container which is equivalent to one inch will, of course, vary depending on the configuration of the container. For example, in a 5,000 gallon cargo tank (400 inches long and 58 inches in diameter) one inch of residue is equivalent to approximately 0.56 percent (28 gallons) of the volume of the tank.

In answer to the commenters' request for a 3 percent weight alternative to the one-inch rule, EPA agrees that a 3 percent weight alternative is acceptable for drum-like containers less than 110 gallons in size (usually 15 gallons to 85 gallons in size) because 3 percent is approximately equivalent to one inch in a 55-gallon drum. Deciding how to deal with a weight alternative for larger-size containers has, however, raised several issues.

The first issue is whether a 3 percent weight alternative is acceptable for larger size containers, i.e., portable tanks, cargo tanks, and tank car tanks (>110 gallons). EPA thinks not, based on environmental health and safety grounds, because of the excessive amount of waste which this alternative would allow to remain in the container (if it could not be removed by normal means). For example, in a 5,000 gallon cargo tank, 3 percent of the contents of the tank would measure approximately five inches in depth (150 gallons). Based on the typical large size container (>110 gallons) which is used to transport hazardous waste, EPA believes that a 0.3 percent weight alternative to the one-inch measurement is suitable for these containers. Three-tenths of one percent (30 gallons) is approximately equivalent to one inch in a 10,000 gallon tank car; thus, EPA will accept this weight alternative for any size container over 110 gallons.[1] Typically, if hazardous wastes are transported in containers over 110 gallons in size, they are transported in tank-like containers of at least 5,000 gallons in size. Three-tenths of one percent amounts to 15 gallons for a 5,000 gallon cargo tank, 24 gallons for an 8,000 gallon tank car, and 30 gallons for a 10,000 gallon tank car. The Agency believes that if all wastes are removed using the practices commonly employed to remove materials from that type of container, then no more than 0.3 percent of the tank-like container's volume should remain.

Because it apparently is not obvious to the regulated community that an equivalent weight measurement may be substituted for a depth measurement under § 261.7, EPA is amending § 261.7 to make it clear that this practice is acceptable. Based on the reasons outlined above, a weight alternative of 3 percent is allowed for containers less than or equal to 110 gallons in size, and 0.3 percent for containers greater than 110 gallons.

The second issue is whether one inch of residue is indeed environmentally acceptable in defining an empty container that is as large as a tank car, portable tank or cargo tank. One inch of residue amounts to approximately 30 gallons in a 10,000 gallon tank car and 50 gallons in a 20,000 gallon tank car. EPA believes that this amount may be too high and that more waste can be removed by normal means. Upon further analysis, the Agency may propose reducing the 1 inch (0.3 percent) limit in defining a large-size empty container.

In addition to the request for a change to the "one inch" rule, EPA has received numerous telephone requests for clarification of the existing provisions of the rule. First, commenters have asked EPA to clarify how to measure one inch on the bottom of a container with a rounded or cone shaped bottom. The answer is that the inch should be measured from the *deepest* point of the bottom of the container.

Secondly, apparently many individuals are reading the "and" at the end of paragraph § 261.7(b)(1)(i) as "or" and therefore believe that the practice of leaving one inch of residue in a container qualifies the container as being empty, whether or not the container has been emptied of all of its contents by methods commonly employed to remove materials from that type of container, as specified in § 261.7(b)(1)(i). EPA emphatically states that this is not the case. When the two paragraphs § 261.7(b)(1) (i) and (ii) are properly read together, it should be clear that one inch of waste material is an overriding constraint and may remain in an empty container only if it *cannot be removed* by no normal means. The rationale for this provision is that there are certain tars and other extremely viscous materials that will remain in the container even after the container is emptied by normal means. Rather than requiring the complete removal of these materials by extraordinary means, EPA is allowing up to an inch of such material to remain in a container. On the other hand, if extraordinary means are necessary to remove the waste to lower the contents of the container down to a depth of one inch, then they must be employed.

Finally, EPA also wants to remind persons who handle hazardous waste that there are certain DOT requirements for shipment of empty containers which have held hazardous materials. Under 49 CFR 173.29, a container which has held a hazardous material must be cleaned and purged of its contents before the hazardous material label can be removed.

[1] EPA has chosen the point of 110 gallons to distinguish between drums and tank-like containers, to conform with DOT definitions. For example, DOT defines portable tank as any packaging over 110 U.S. gallons which is designed primarily to be loaded into, or on, or temporarily attached to, a transport vehicle or ship, and equipped with skids, mounting, or accessories to facilitate handling of the tank by mechanical means (49 CFR 171.8).

B. Ignitable Liquid Residues in Containers

One commenter was concerned with the one-inch rule as applied to residues in empty containers that are hazardous solely because they are ignitable liquids. The commenter argued that the fluidity coupled with the flash point of liquid ignitable residues should be of more important regulatory concern to EPA than the quantity of liquid ignitable residue remaining in an empty container.

Specifically, the commenter pointed out that many liquid ignitable wastes have low fluidity and therefore do not drain well, and that more than one inch of such materials may remain in a container despite efforts to drain the container. The commenter believed that the residues in such regulated containers are actually of low concern in landfills because they are not mobile liquids. EPA disagrees with the commenter. EPA is concerned with such wastes because they pose a fire hazard (unless the containers are handled in such a way as to prevent ignition), and not necessarily because they may leach into groundwater, especially if these wastes are not also toxic. In fact, containers holding greater than one inch of extremely viscous ignitable material may pose a greater hazard than the same amount of a very fluid ignitable material because the waste will not tend to run out of the container and mix with other wastes and be diluted.

The same commenter stated that the specific flash point of a material within the "broad" EPA ignitability definition (flashpoint $<140°F$) may be a more important factor than the one-inch residue limitation in defining whether the residue in a container is hazardous and ought to be subject to regulation. The commenter believed that the flash characteristic as well as the flash point is important in determining the hazard posed by an ignitable liquid waste to human health and the environment, and that, for example, container residues (irrespective of quantity) which flash below 140°F but do not support combustion, are less hazardous and should not be treated as hazardous wastes.

In this comment letter, the writer was not so much questioning the one-inch rule as he was questioning EPA's definition of ignitable liquid. EPA previously explained its rationale for setting a flash point limit of 140°F in defining an ignitable liquid. (See 45 FR 33108–33109, May 19, 1980, and "Background Document: § 261.21—Characteristic of Ignitability," May 2, 1980, p. 25.) EPA has previously recognized that wastes classified by one hazardous waste characteristic may pose various degrees of hazard based on other properties of the waste; for example, EPA has recognized that certain materials that flash will not support combustion, and thus EPA excluded aqueous solutions which contain less than 24 percent alcohol by volume from the definition of ignitable liquid.

The Agency has received other comments on degree of hazard issues and is continuing to resolve them. Recently, the Agency has received a petition from National Paint and Coatings Association (NPCA) on the same issue of ignitable liquids discussed above. As a result, the Agency is considering amending the definition of ignitable liquid and will consider the concerns of the commenter when addressing NPCA's petition. The Agency is therefore not changing the definition of the one-inch rule for ignitable liquids at this time.

C. Gas Residues

In § 261.7(b)(2), EPA defines an empty compressed gas container as one in which the pressure approaches atomspheric. Several commenters expressed concern that users of gas cylinders might try to use extraordinary means to reach atomospheric pressure before returning gas cylinders to the gas suppliers who own them.

The commenters suggested substituting the words ". . . reaches the pressure of the users' internal distribution manifold" for "approaches atmospheric." EPA does not agree with this comment because this change could result in a significant amount of material remaining in the cylinder. EPA defined an empty gas cylinder as one in which the pressure approaches atmospheric, because the Agency is concerned with the hazards posed by the residual gas, which, if improperly managed, may pose a substantial hazard to human health and the environment. EPA believes, however, that this comment largely resulted from confusion over when a compressed gas cylinder becomes subject to RCRA control.

On November 3, 1980, in a letter to Lawrence W. Bierlein of the Compressed Gas Association, John P. Lehman of EPA clarified the applicability of the RCRA hazardous waste regulations to users of compressed gas. The letter stated that the return of the used cylinder to the supplier was not generation of waste under RCRA. This letter was widely distributed to users of compressed gas cylinders and, at the request of many compressed gas users, an edited version of the information contained in the letter is printed below for the reader's convenience. (The Compressed Gas Association provided the information on the use and disposal of compressed gas cylinders to EPA.)

All compressed gas cylinders are owned by or are under equivalent control of the gas supplier. When the customer has completed his use of the gas, the cylinder is returned to the supplier. As a matter of safety, there is residual pressure in the cylinder when it is returned. (The return transportation is extensively regulated under the Federal Hazardous Materials Regulation, 49 CFR 170–189). The customer's purpose in making the shipment is to return the supplier's property, not to discard the remaining contents of the cylinder. The general practice is to return cylinders for refilling. The customer does not make the decision on the final disposition of the residue in the cylinder; this is the exclusive prerogative of the gas supplier. Further, the decision whether or not to discard the contents of the container is not made until the container is returned to the supplier.

Under these circumstances, the customer is not generating a waste by merely returning the cylinder and neither the returned container nor the contained residue is a "solid waste" as that term is defined by the Resource Conservation and Recovery Act and 40 CFR Part 261. Because the residue gases are not discarded by the customer and the used compressed gas cylinder is returned to the supplier, the decision that renders the cylinder (and contained gas) to be a waste is made by the supplier. The customer's return of the supplier's cylinder that may hold some residue does not constitute the shipment of a solid (or hazardous) waste. The cited DOT requirements apply, however, and the containers may have to be transported as a hazardous material.

D. Regulation of Residues of Wastes Listed in § 261.33(e)

Under § 261.7 and § 261.33(c), residues in containers which held acutely hazardous wastes are not excluded from regulation unless the container which had previously held a waste listed in § 261.33(e) is triple rinsed or cleaned by an equivalent method. One commenter took issue with this provision, stating that the amounts of acutely hazardous wastes remaining in containers which are emptied according to §261.7(b)(1) are *de minimis* and pose no significant threat to human health and the environment. The commenter further stated that the resulting rinsate would require increased handling and exposure of the waste to humans, and that such small amounts of residue do not justify this increased handling and exposure.

EPA disagrees with the commenter that quantities of acutely hazardous waste remaining in a container which has been emptied according to § 261.7(b)

(1) are *de minimis* and pose little threat to human health and the environment. The chemicals listed in § 261.33 (e) pose an extreme hazard to human health and the environment. For example, chemicals listed for acute oral toxicity have been found to either be fatal to humans in low doses, or to have an oral LD50 toxicity to rats of less than 50 milligrams per kilogram. Such chemicals are extremely powerful poisons; ingestion of less than a teaspoonful of these chemicals could be fatal to an adult. Lesser amounts can be expected to cause illness or even death to children and to more sensitive members of the population.

Additionally, chemicals listed in § 261.33(e) for acute inhalation toxicity have an inhalation LC50 of less than 2 milligrams per liter. These are also extremely effective poisons. Less than 0.2 ounces of such a material are sufficient to lethally contaminate the air of an average size (12'x 12' x 8') room. Indiscriminate disposal of small quantities of such chemicals could be highly dangerous. EPA, therefore, was concerned that the residue remaining in a container that had held a § 261.33(e) material may be lethal in quantities remaining after the container has been emptied according to § 261.7(b)(1). Accordingly, EPA is not changing the interim-final provisions of § 261.7(b)(3) and § 261.33(c) which require triple rinsing or an equivalent method of removal of a § 261.33(e) waste from a container for the container to be considered empty, and is issuing these provisions in final form.

E. Triple Rinsing

1. *Rinsates from Containers Which Have Been Triple Rinsed.* One commenter was particularly concerned with the EPA requirements for the management of rinsate from containers which have been triple rinsed. Under § 261.7(b)(3), a container or inner liner which has held a waste listed in § 261.33(e) can be considered empty if it has been triple rinsed or cleaned by an equivalent method. The rinsate is a hazardous waste if it meets one of the characteristics in Part 261, Subpart C, or if it contains any amount of a listed hazardous waste and therefore remains subject to the regulations via the "mixture rule" (§ 261.3(b)). The commenter expressed concern over rinsates being hazardous via the mixture rule.

This issue is only one of several that have surfaced concerning the mixture rule. EPA is in the process of studying these issues and if necessary will prepare additional amendments to the hazardous waste regulations to address these concerns. For example, on November 17, 1981, the Agency promulgated an interim final rule which exempted certain categories of mixtures of solid wastes and hazardous waste from the "presumption of hazard" provisions of the hazardous waste regulations (see 46 FR 56582–56589).

2. *Triple Rinsing Is Not Treatment.* On November 25, 1980, in the preamble discussion, EPA stated that triple rinsing does not constitute "treatment" as defined by § 260.10 (45 FR 78528). One commenter disagreed with EPA, stating that EPA had failed to quote the entire definition of treatment and that the act of triple rinsing does indeed meet the latter half of the § 260.10 definition of "treatment". Specifically, the commenter said that triple rinsing meets the definition of treatment because triple rinsing of containers "reduces the waste in volume" and makes a container "more amenable for storage."

EPA disagrees with the commenter and maintains its original position that triple rinsing is not treatment. Most commenters have agreed with the Agency on this point. Therefore, the regulated community should continue to consider that triple rinsing does not constitute treatment, as previously set forth.

F. Dedicated Tank Cars and Tank Trucks

One commenter asked that EPA consider a special exemption for tank-like containers which are in "dedicated service," that is, containers which are used to transport manifested wastes to designated treatment, storage or disposal facilities and returned to the generator to pick up the same waste. When these containers are not unloaded completely they do not meet EPA's definition of empty container. A manifest must then accompany the unloaded (but not "empty") container on its return trip to the generator. The commenter pointed out that the requirement that a manifest accompany an unloaded but not empty container presents a dilemma, because a manifest must indicate a designated treatment, storage or disposal facility, but the generator is often *not* a permitted treatment, storage, or disposal facility.

EPA believes that exemption of dedicated containers that are not empty from the manifest requirements is not an environmentally acceptable solution to this problem. The fact that a container that is not empty is in dedicated service makes its contents no less hazardous to the environment than other hazardous wastes. EPA believes that wastes in dedicated containers that are not empty should be accompanied by a manifest on the return trip to the generator.

EPA, however, agrees with the commenter that the Part 262 standards technically preclude the option of naming the generator of a hazardous waste as the "designated facility" on the manifest which must be originated by the TSDF when returning a container that is not empty to the generator (if the generator is not also TSDF). Therefore, because there are cases where it may be necessary and environmentally sound to return containers that are not empty to a generator, EPA is considering several alternatives to amend the 40 CFR Part 262 standards to allow the TSDF to name the generator as the designated facility on the manifest. EPA will publish any necessary amendments to Part 262 separately.

G. Impact of Amendment on Small Businesses

One commenter stated that the empty container amendment is overly restrictive, not necessary on technical or public safety grounds, and must be weighed against its economic consequences. The commenter is an industry trade association which represents a substantial number of small businesses, and insists that this amendment will impose a cost burden of millions of dollars on this industry.

EPA disagrees that the amendment is "over restrictive" and "not necessary on technical or public grounds." In paragraph D above, the Agency explained its rationale for requiring triple rinsing of containers which previously held acutely hazardous waste listed in § 261.33(e). As far as regulating containers which previously held other hazardous wastes is concerned, the Agency contends that these containers are dangerous and pose a hazard to human health and the environment. The Agency has therefore set forth § 261.7 as a means of defining when containers are considered to be empty.

EPA further disagrees that the rule is a cost burden; in fact it was industry representatives who requested that EPA define when a container is considered "empty." It was argued that unless the term "empty container" was defined, it could cost industry millions of dollars to handle all containers which previously held hazardous wastes as hazardous wastes. EPA responded to this concern by defining when a container is considered "empty" and sees the amendment as a tremendous cost savings to industry. Most of the commenters agreed that the amendment was, in fact, reasonable.

EPA previously addressed the issue of the impact of the hazardous waste regulations on small quantity generators of hazardous waste in the preamble to the regulations issued on May 19, 1980 (see 45 FR 33102–33105). Under § 261.5, EPA conditionally excluded from regulation those persons who generate less than 1000 kg/mo of hazardous waste or 1 kg/mo of acutely hazardous waste. Under this exclusion, small quantity generators need not comply with the empty container rule. The Agency believes that this exclusion has minimized the impact on small businesses without compromising environmental protection, and therefore does not agree with the commenter that the rule poses a burden on small businesses.

H. Regulation of Hazardous Waste Residues in Empty Containers

As indicated previously, the Agency is concerned with those facilities that clean or otherwise handle large numbers of empty containers (e.g., drum and barrel reconditioners and tank cleaning operations) because they may accumulate, store, treat or dispose of significant quantities of unregulated residues. Therefore, the Agency specifically solicited comments and data on whether residues left unregulated by § 261.7 may pose a substantial hazard to human health and the environment. The Agency discussed three options for regulation of residues in "empty" containers (see 45 FR 78526–78527).

In response, the Agency received a number of comments regarding the three alternatives. The vast majority of commenters favored regulation of the residues when they are removed from the containers, because this alternative would place the minimal regulatory burden on those who handle "empty containers." The commenters argued that this is the most reasonable option because of the smaller quantity of waste to be managed than would be generated by triple rinsing. They further stated that someone handling empty containers would know the composition of the residue from the label on the container because the Department of Transportation (DOT) regulations require that a label remain on hazardous material containers until they are cleaned and purged of their contents.[2] Commenters also believe that adopting this option will insure that empty containers will be sent to reclamation centers.

Many of these same commenters also argued that another option, triple rinsing, would be an undesirable alternative for two main reasons. First, they argued that triple rinsing would generate additional hazardous waste which would require special handling and, thus, would be a more costly procedure. Second, the commenters stated that such a requirement would require persons handling empty containers to duplicate services already provided by those who reclaim them. One commenter, however, favored triple rinsing. This commenter claimed that it is impractical for a sanitary landfill operator to determine whether a container he receives is "empty" by measuring the residues, and that the landfill operator could be exposed to hazardous residues when crushing these containers with bulldozer-type equipment. This commenter, therefore, favored triple rinsing and marking of rinsed containers as "non-hazardous" so that a landfill operator could know that the containers are safe.

Most commenters felt that the third option—limiting the amount of unregulated residue a person could manage during a particular period without becoming subject to RCRA controls—was unworkable. One commenter in particular thought that any limitation which the Agency would set would, of necessity, be arbitrary.

In evaluating these comments, the Agency generally agrees with the majority of commenters who indicated that control of the residue in empty containers after it is removed is most desirable. The Agency favors this option based on many of the same arguments made by the commenters, i.e., it appears to be the most reasonable and cost-effective way to manage these residues. EPA, however, is not at this time amending the regulations to specifically cover these activities. EPA does not plan to do this until it has studied the problem and has expanded the Agency's data base on the quantities and concentrations of the residues which are generated. EPA has recently completed a study to assess barrel and drum reconditioning processes. This study includes a two-part report, "Barrel and Drum Reconditioning Industry Status Profile," and "Drum Reconditioning Process Optimization," EPA Contract No. 68–03–2905 (available from NTIS as PB 82–113382 and PB 82–113374, respectively). EPA would like to supplement these studies with additional sampling and analysis information and, if appropriate, a Regulatory Impact Analysis. Upon completing these studies, the Agency will be in a better position to propose amending the regulations to ensure environmentally sound management of these residues. An amendment, if appropriate, might include a specific listing of wastes from these containers.

[2] DOT requirements pertain to (a) hazardous waste subject to 40 CFR Part 262 manifest requirements, and (b) unmanifested hazardous wastes (e.g., small quantities of hazardous waste or laboratory samples) that meet the DOT definition of hazardous material.

III. Today's Amendment

In response to the comments received on the interim final regulation, EPA is amending § 261.7(b)(1) by adding a weight alternative to the "one-inch rule." Because this change is being made directly in response to public comments, the change is promulgated as a final rule. Also being published as final rules are the unchanged interim final provisions of paragraphs (a), (b)(2), and (b)(3) of § 261.7 and paragraph (c) of § 261.33.

IV. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect 6 months after their promulgation. In addition, section 553(d) of the Administrative Procedure Act (APA) requires publication of a substantive rule not less than 30 days before its effective date. The purpose of these requirements is to allow persons handling hazardous waste sufficient lead time to prepare to comply with major new regulatory requirements.

The interim final amendments published on November 25, 1980 that are being finalized today were previously made effective on the following dates: § 261.7—November 19, 1980; § 261.33(c)—May 25, 1981. Because the one change to § 261.7 being made today (a weight alternative to the one-inch rule) is merely a clarification of the previous version of § 261.7, for EPA not to make this change effective immediately would cause confusion and serve no useful purpose. EPA therefore believes that the RCRA Section 3010(b) requirement and the APA 553(d) requirement for publication before effective date are inappropriate as applied to the change to § 261.7.

V. Regulatory Impacts

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This interim final regulation is not major because it will not result in an effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There will be

no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. In fact, this final amendment will reduce regulatory requirements imposed by the hazardous waste regulations that were initially issued on May 19, 1980. Because this amendment is not a major regulation, no Regulatory Impact Analysis is being conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: August 10, 1982.

John W. Hernandez, Jr.,

Acting Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 reads as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 and 6922).

2. Section 261.7 is amended by revising paragraphs (b)(1) (i) and (ii) and by adding paragraph (iii) to read as follows:

§ 261.7 Residues of hazardous waste in empty containers.

* * * * *

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified in § 261.33(c) of this Chapter, is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, *e.g.*, pouring, pumping, and aspirating, *and*

(ii) No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner, *or*

(iii) (A) No more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size, or

(B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size.

* * * * *

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

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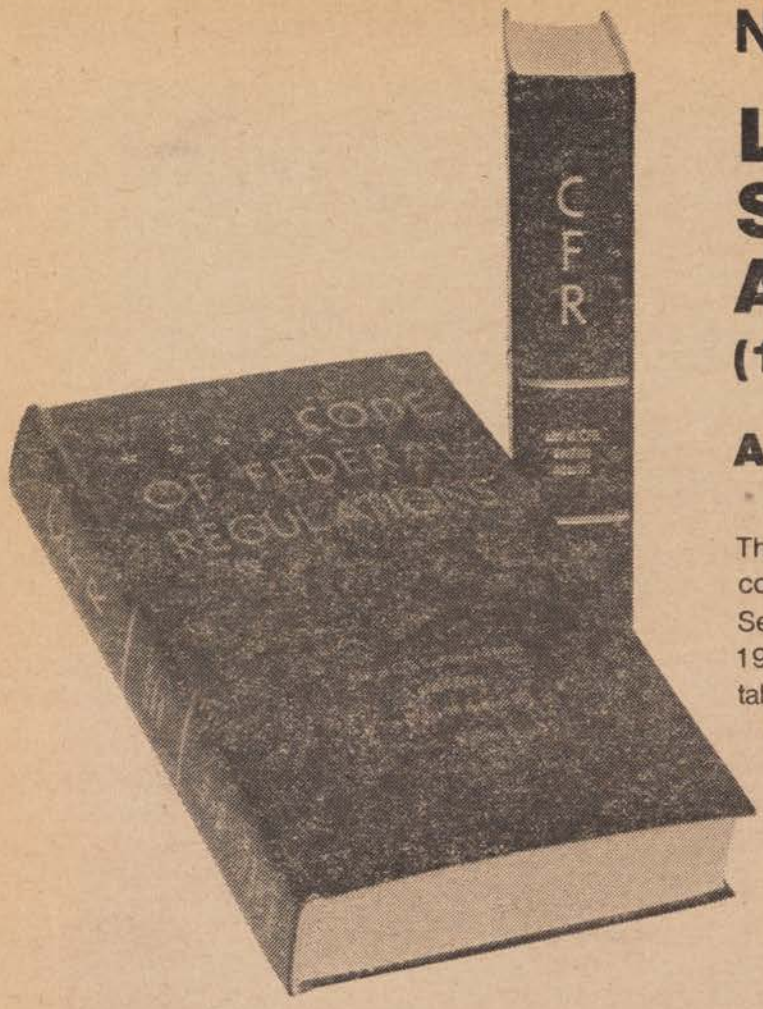
List of Public Laws

Last Listing August 13, 1982

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

S.J. Res. 190 / Pub. L. 97–235 To authorize and request the President to designate "National Family Week". (Aug. 16, 1982; 96 Stat. 265) Price: $1.75.



New Publication

List of CFR Sections Affected

(1964 through 1972)

A Research Guide

These two volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1964 through 1972. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

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